

CALIFORNIA COASTAL COMMISSION

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APPEAL STAFF REPORT

SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal number..... A-3-SCO-99-056, Hooper/Filizetti Revetment

Applicants..... Christine Hooper and Gary Filizetti

Appellants..... Commissioners Sara Wan and Pedro Nava; Christine Hooper and Gary Filizetti

Local government Santa Cruz County

Local decision..... Approved with conditions (August 6, 1999)

Project location..... Seaward end of 23rd Avenue on the beach bluffs (at Santa Maria Cliffs Beach fronting Corcoran Lagoon) in the Live Oak area of Santa Cruz County (APNs 028-231-01 and 23rd Avenue road right-of-way parcel).

Project description Recognize after-the-fact the extension of a rip-rap revetment around the corner of the coastal bluff and inland towards East Cliff Drive. Work took place primarily in February 1997, and involved approximately 500 cubic yards (or roughly 1,200 tons) of large rock placed against the bluff and excavated into the bedrock on and under the sandy beach.

File documents Santa Cruz County Certified Local Coastal Program (LCP), including Land Use Plan (LUP) and Zoning (IP); Santa Cruz County Coastal Development Permit File 97-0076; Coastal Development Permit Application Number 3-97-027; California Coastal Commission Regional Cumulative Assessment Project (ReCAP) Database.

Staff recommendation .. Substantial Issue Exists; Denial

Summary of staff recommendation: This is the substantial issue determination and de novo hearing for appeal number A-3-SCO-99-056 (the Commission previously opened and continued the substantial issue hearing for this matter on September 15, 1999). Staff recommends that the Commission find that a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County Local Coastal Program (LCP) and take jurisdiction over the project. Staff subsequently recommends that the Commission deny the coastal development permit for this development.



California Coastal Commission
January 12, 2000 Meeting in Santa Monica

Staff: D.Carl Approved by:

A-3-SCO-99-056 Filizetti-Hooper rip-rap stftrpt 12.16.99.doc

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 2

Staff Report Contents

1. Staff Report Summary	3
2. Local Government Action	6
3. Appeal Procedures	6
4. Appellants' Contentions	7
4.1 Appeal of Commissioners Sara Wan and Pedro Nava	7
4.2 Appeal of Applicants Christine Hooper and Gary Filizetti	10
5. Procedural History (Post-County Action)	10
6. Staff Recommendation on Substantial Issue	11
7. Staff Recommendation on Coastal Development Permit	12
Recommended Findings and Declarations	12
8. Project Description & Background	12
8.1 Regional Setting	12
8.2 Live Oak Area	14
8.3 Project Location	15
8.4 Project Description	15
8.5 Unpermitted Development	16
9. Substantial Issue Findings	17
9.1 Shoreline Structures	18
9.1.1 Existing Structure	18
9.1.2 Threat to Existing Structure	18
9.1.3 Alternatives to Shoreline Protection	19
9.1.4 Sand Supply Impacts	19
9.2 Public Access	20
9.3 Visual Resources	20
9.4 Wetland and Other Environmentally Sensitive Habitats	21
10. Coastal Development Permit Determination	22
10.1 Geologic Conditions and Hazards	22
10.1.1 LCP Policies	22
10.1.2 Defining the Existing Structure	24
10.1.3 Defining the Threat to the Existing Structure	25
10.1.4 Alternatives to Shoreline Protection	26
10.1.5 Sand Supply Impacts	27
10.1.6 Geologic Conditions and Hazards Conclusion	29
10.2 Public Access and Recreation	29
10.2.1 Applicable Policies	29
10.2.2 Property Ownership Issues – 23 rd Avenue	32
10.2.3 Coastal Priority Site – Beach Parcel	34
10.2.4 Blocked Public Access – Existing Trail	35
10.2.5 Public Access – Sand Supply Impacts	37
10.2.6 Public Access and Recreation Conclusion	38
10.3 Visual Resources	39



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 3

10.3.1 Applicable Policies.....	39
10.3.2 Visual Access Issues	40
10.4 Wetland and Other Environmentally Sensitive Habitats	42
10.4.1 LCP Policies	42
10.4.2 Consistency Analysis.....	42
10.4.3 ESHA Conclusion	43
10.5 California Environmental Quality Act (CEQA)	43
11. Enforcement.....	44
12. Exhibits	
Exhibit A: Santa Cruz County Staff Report, Findings and Conditions	
Exhibit B: Appeal of Commissioners Sara Wan and Pedro Nava	
Exhibit C: Appeal of Applicants Christine Hooper and Gary Filizetti	
Exhibit D: Project Location	
Exhibit E: Property Ownership at the Site	
Exhibit F: Annotated Project Site Plan	
Exhibit G: Bluff Retreat at Site	
Exhibit H: Applicant's Alternative Access Proposal	
Exhibit I: LCP ESHA Policies	
Exhibit J: Applicant-supplied Letter on ESHA	
Exhibit K: Commission Hearing Postponement Correspondence	
Exhibit L: Commission Staff CEQA Comments on Project	
Exhibit M: Most Recent CDP Application Number 3-97-027 Status Letter	
Exhibit N: Santa Cruz County Enforcement Agreement	

1. Staff Report Summary

The Applicants propose to extend an existing bluff-fronting revetment approximately 100 linear feet along a coastal bluff in the Live Oak area of Santa Cruz County on and adjacent to Santa Maria Cliffs Beach and Corcoran Lagoon. The proposed 500 cubic yard (or roughly 1,200 ton) revetment extension is already in place, having been installed without benefit of a coastal development permit (CDP) in February 1997. As a result, the County approval that is the subject of this appeal is for after-the-fact recognition of this structure. The revetment is not intended to protect the blufftop residence, but rather is proposed to protect the existing revetment at this site. In other words, the proposed revetment is designed to protect another revetment.

The Appellants raise substantial issues concerning the consistency of the County's approval of the proposed project with the shoreline structure, public access, visual resource and environmentally sensitive habitat area (ESHA) policies of the certified LCP, and with the Coastal Act's access and recreation policies. These same policy inconsistencies are such that the project is not approvable.

1.1 Shoreline Structures



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 4

The LCP limits structural shoreline protection measures to protect “existing structures” at this location; the LCP further defines existing structures as “existing residences and business or commercial structures.” The proposed revetment has been designed to protect another revetment. This is inconsistent with the LCP.

The LCP requires demonstration of “a significant threat to an existing structure” if a shoreline protection structure is to be considered. The subject residence is 50 to 75 feet from the break in slope defining the meandering bluff edge at this location and is not currently threatened by shoreline erosion. Likewise, even if the existing revetment could be considered an “existing structure” for which protection could be pursued (which it is not), there has been no measurable bluff retreat at the proposed extension location in over 70 years. Although wave runup and creek flow during storm surge conditions can result in some oblique storm attack at the base of the bluff proposed for armoring, and although some scour is likely at the end of the existing permitted revetment, such conditions do not create a “significant threat.” This is inconsistent with the LCP.

Even were an “existing structure” “significantly threatened” at this location, the LCP requires a “thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure.” Moreover, the LCP only allows structural measures “if non-structural measures...are infeasible from an engineering standpoint or not economically viable.” In this case, the Commission’s staff engineer has evaluated the project and determined that “relocation or partial removal” of the existing revetment proposed for protection is a reasonable engineering solution. In other words, maintenance of the tapered end of the existing revetment to ensure that it is operating as designed is a feasible solution, as is the “no project” alternative based on the lack of significant retreat or coastal erosional danger to LCP-defined existing structures at this location; these less damaging alternatives have not been pursued. This is inconsistent with the LCP.

1.2 Public Access & Recreation

The proposed revetment extension would be constructed partially on the 23rd Avenue road right-of-way and partially on a beach parcel designated as a “coastal priority site.” The LCP designates each of these areas for coastal recreational uses, facilities, and amenities. The development of this site with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure significantly threatened, that would unnecessarily degrade the adjacent beach recreational area, and that would displace other potential LCP-described priority uses, is inconsistent with the LCP and the Coastal Act.

The LCP and Coastal Act require protection of existing accessways. The proposed revetment would block an existing publicly used meandering trail from 23rd Avenue to the beach. The County’s required access mitigation for this impact is ambiguous and it is unclear if this accessway would be adequately protected. Were the revetment to be otherwise approvable (which it is not), the reconfigured trail alignment required by the County would need to be better defined (both the legal instrument and the proposed physical trail improvements) in order to be found consistent with the LCP and the Coastal Act.

1.3 Visual Resources



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 5

The LCP and Coastal Act require protection of existing visual access at this location. The existing revetment (i.e., that rip-rap in place prior to the unauthorized placement of rock in February 1997), did not wrap fully around the bluff and was only minimally visible from the public vista along the East Cliff Drive at this location. The proposed revetment, even with the County-required vegetation at its peak, would frame the existing ocean vista at this location with a pile of rock. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large revetment in front of the previously unadorned bluff. This would negatively redefine the scenic corridor, reframe the ocean vista at this location, and upset the general viewshed of the open beach at this location. These negative viewshed impacts are inconsistent with the LCP and Coastal Act.

1.4 ESHA

The LCP protects ESHA at this location. The project proposes to place rock within the boundaries of an area seasonally occupied by Corcoran Lagoon and/or Rodeo Creek. This system may provide habitat for listed species¹. This area is an ESHA within which limited development activity is allowed. It is unclear to what extent ESHA would be negatively impacted by the proposed project because the LCP-required biotic assessment/report was not developed. This is inconsistent with the LCP.

1.5 Conclusion

In sum, there is not an existing, significantly threatened structure at this location. Even if such a case were clearly established (which it is not here), it is not clear that the proposed project would be the least environmentally damaging feasible solution to protect such a threatened existing structure. Even if it could then be demonstrated that the proposed revetment were the least environmentally damaging feasible solution (which it is not here), the impacts on public access, visual resources, and ESHA are considerable.

The project is inconsistent with the LCP, unnecessarily impacts coastal resources, and staff is recommending denial.

Finally, the proposed revetment extension was installed without benefit of a CDP and has been in place for nearly three years. The subject revetment's negative coastal resource impacts (i.e., on public access, on visual resources, on ESHA) have therefore been felt by the public for those 3 years. The Commission's denial of this project activates the clause in the County enforcement agreement (agreed to by Applicant Filizetti) that requires removal of the revetment and restoration of the site to its pre-unpermitted development condition within 30 days of this final Commission action. To restore coastal resources at the site, and in the interest of the public, the subject revetment must be removed in its entirety, and the site restored to its pre-violation status, as soon as possible. Since removal and restoration constitute "development," any such activities will require CDPs; one for work on the beach (in the Commission's

¹ Tidewater goby (*Eucyclogobius newberryi*, Federal Endangered Species), steelhead (*Oncorhynchus mykiss*, Federally Threatened Species), and coho salmon (*Oncorhynchus kisutch*, Federal Threatened Species, State Endangered Species) are all thought to be present in Corcoran Lagoon/Rodeo Creek system.



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 6

CDP permitting jurisdiction) and an appealable CDP for that portion in the County's CDP jurisdiction above the toe of the bluff. In any event, removal and restoration will be handled through separate enforcement action.

2. Local Government Action

The proposed project is located partially within the coastal permitting jurisdiction of Santa Cruz County, and partially within the Coastal Commission's coastal permitting jurisdiction. The jurisdictional boundary in this case is along the toe of the coastal bluff (see page 2 of Exhibit F for the approximate location of this boundary). Accordingly, the CDP which is the subject of this appeal is only for that portion of the project inland of the toe of the bluff. The remainder of the project is the subject of a pending CDP application to the Commission. This related application (application number 3-97-027) remains unfiled pending receipt of substantive filing information (see Exhibit M for latest status letter to the Applicant). Although clearly it is not always feasible to arbitrarily distinguish impacts between jurisdictions that are created by the one rip-rap project, this staff report, unless otherwise indicated, discusses the CDP for the portion of the project in the County's jurisdiction.

On August 6, 1999, grading and coastal permits for the proposed project were approved by the Santa Cruz County Zoning Administrator; this action was not appealed to the Santa Cruz County Planning Commission. Notice of this Santa Cruz County final local action was received in the Commission's Central Coast District Office on Monday, August 9, 1999. See Exhibit A for the County's staff report, findings and conditions on the project. The Commission's ten-working day appeal period for this action began on Tuesday, August 10, 1999 and concluded at 5:00 P.M. on Monday, August 23, 1999. Two valid appeals (see below) were received during the appeal period.

3. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because of its location between the sea and the first public road paralleling the sea and its location within 300 feet of the top of the seaward face of the coastal bluff.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 7

permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the nearest public road and the sea and thus, this additional finding must be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

4. Appellants' Contentions

4.1 Appeal of Commissioners Sara Wan and Pedro Nava

The two Commissioner Appellants contend in full (see Exhibit B for the complete appeal document):

The Santa Cruz County-approved project is a follow-up permit to an emergency permit (authorized by the County in 1997) which covers additional work after-the-fact that was not authorized by the emergency permit. The emergency permit was for work on an existing revetment, while the additional work extended the rip-rap revetment around the corner of the coastal bluff and inland towards East Cliff Drive. Work involved approximately 500 cubic yards of large rock placed against the bluff and excavated into the bedrock on and under the sandy beach. The revetment does not protect the blufftop residence, but is proposed to protect the existing revetment at this site.

Shoreline Structures

The proposed project is not consistent with LCP Policy 6.2.16 (Structural Shoreline Protection Measures) and Section 16.10.070(g)(5) (Coastal Bluffs and Beaches Permit Conditions) because:

- It has not been adequately demonstrated that the revetment extension is necessary to protect an existing endangered structure at this location. The LCP requires demonstration of “a significant threat to an existing structure” if a shoreline protection structure is to be considered.
- It has not been adequately demonstrated that the required “thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure” has been performed. In fact, it appears that “relocation or partial removal” of the existing revetment is a reasonable alternative solution, particularly given the proposed project’s negative impacts on public access, environmentally sensitive habitat area (ESHA), and visual resources.
- The proposed revetment reduces recreational beach area contrary to the LCP requirement that



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 8

“the protection structure must not reduce or restrict public beach access.”

- There is no discussion of the effect of the proposed project on shoreline processes and sand supply contrary to the LCP requirement that “the protection structure must not...adversely affect shoreline processes and sand supply.” There are likewise no mitigations for any such impacts due to the project.
- The proposed project may increase erosion on adjacent properties contrary to the LCP requirement prohibiting such an impact.
- The proposed project is within the boundaries of Corcoran Lagoon and/or Rodeo Creek at this location, with the proposed revetment partly designed to protect against stream scour. However, no biotic report was done for the project. Corcoran Lagoon is potentially habitat for the Federally-listed steelhead, coho salmon and endangered Tidewater goby. It is not clear that the proposed project would not “cause harmful impacts on wildlife and fish habitats” as required by the LCP.
- The rocks do not minimize visual intrusion as required by the LCP.
- The project does not appear to have included a permanent survey monument as required by the LCP.

Wetland/Riparian Resources

The project proposes to place rock within the boundaries of an area seasonally occupied by Corcoran Lagoon and/or Rodeo Creek. However, no biotic report was done for the project as required by LCP Policy 5.1.9. Corcoran Lagoon is potential habitat for the Federally-listed steelhead, coho salmon and endangered Tidewater goby. The Lagoon and environs is a wetland which is an environmentally sensitive habitat area (ESHA). A revetment in this ESHA is inconsistent with LCP wetland and wildlife protection policies including, but not limited to, Policies 5.1 et seq (Biological Diversity) and 5.2 et seq (Riparian Corridors and Wetlands), and Chapters 16.30 (Riparian Corridor and Wetlands Protection) and 16.32 (Sensitive Habitat Protection).

Visual Resources

The existing rip-rap (i.e., that rip-rap in place prior to the unauthorized placement of rock), did not wrap fully around the bluff and was only minimally visible from the East Cliff Drive scenic corridor. However, the proposed rip-rap would extend around the bluff and further northward towards East Cliff Drive creating a substantial visual impact. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large, unnatural pile of rock in front of the previously unadorned bluff which would essentially redefine the scenic corridor. Such a visual intrusion is contrary to LCP visual policies including, but not limited to, Policies 5.10 et seq (Visual Resources) and Sections 13.10.351 (Purposes of the “PR” District), 13.10.354 (Design Criteria for the “PR” District), 13.20.130(b)(1) (Coastal Zone Visual Compatibility Design Criteria), and 13.20.130(d)(2) (Beach Viewshed Design Criteria).



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 9

Public Access and Recreation

The proposed project takes place primarily on parcel number 028-231-01. Pursuant to LCP Policy 2.23.2, parcel number 028-231-01 has been identified as a “Coastal Priority Site.” Pursuant to LCP Figure 2-5, this site is reserved for “acquisition and improvement of beach parcels for coastal access, recreation and protection of coastal biotic habitat.” Pursuant to Policy 2.23.2, a master plan is required for development at this site – no master plan is part of the County’s approval.

The proposed revetment removes recreational sandy beach area from availability on this Coastal Priority Site. Some portion of this site may also be in the public trust (i.e., it is partially covered by Corcoran Lagoon) or a property where the public has established a prescriptive right to access, but the County’s approval has not discussed and/or examined these possibilities. The site is also subject to a “beach easement,” the parameters of which – including any development restrictions – have not been described. The County approval dismisses the loss of recreational sandy beach area as “less than significant” and does not contain any mitigation for this beach access loss. However, the project will remove approximately 900 – 1,200 square feet of publicly used recreational sandy beach from use at this Coastal Priority Site. This is a significant negative access impact that has not been adequately characterized or mitigated by the County approval.

The proposed project also takes place partially on the 23rd Avenue road right-of-way. The proposed project will block existing physical access to the beach currently available through this right-of-way area; the County approval included conditions for an offer to dedicate and a reestablished trail across this area. However, the Applicant does not own the property which would be dedicated. The County approval also includes a condition for the Applicant to obtain an ownership interest in the right-of-way parcel through a “quit-claim” from the County. The County approval does not discuss the ramifications of the property ownership of this parcel. A portion of revetment may also extend onto the sandy beach portion of the right-of-way. This right-of-way is either: (1) public property; (2) private property where the public has established a prescriptive access right; or (3) private property where the public has not established a prescriptive access right. Lacking evidence to the contrary, the rebuttal presumption is that the public owns or has established prescriptive access rights on the 23rd Avenue road right-of-way. The LCP encourages the development of coastal vistas at this location (LCP Policy 7.7.1 and “Coastal Recreation” Program C) and protects this coastal blufftop area from intrusion by non-recreational structures and incompatible uses (Policy 7.7.4).

Accordingly, the project is inconsistent with Coastal Act access and recreation policies, and LCP access and recreation policies including, but not limited to, Policies 7.7 et seq (Coastal Recreation, Shoreline Access, and Beach Access).

In sum, it has not been clearly demonstrated that there is an existing principal structure in danger from erosion. If such a case could be clearly established, it is not clear that the proposed project would be the least environmentally damaging feasible solution to protect such an existing principal structure in danger from erosion. If it could be demonstrated that the revetment were the least environmentally damaging feasible solution, the coastal resource impacts associated with such a



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 10

project have not been adequately characterized and mitigated. The proposed project is not consistent with Coastal Act access and recreation policies, and is not consistent with the LCP's shoreline structure, wetland/riparian, visual resource, and access and recreation requirements.

Please see Exhibit B for the Commissioner Appellants' complete appeal document.

4.2 Appeal of Applicants Christine Hooper and Gary Filizetti

The two Applicants contend that "the [Santa Cruz County] conditions impose requirements and conditions that are far beyond any impacts caused by this development and represent an attempt to obtain public rights and shift public liability to a private property owner." The Applicants generally describe the following contentions:

- The Applicants contend that the County's approval "seeks unreasonable dedications of private property for public use in violation of the Constitutions of the State of California and the United States of America," specifically requirements: to build a stairway; to offer to dedicate an easement on the Applicant's property; to maintain the trail located within the required easement area; to maintain landscaping required to be placed on public property.
- The Applicants contend that the County's action creates "unreasonable personal liability on the private property owner for public use" because of the County's requirement for the Applicants to "maintain the established public access to the 'forebeach' in a permanent usable and safe condition."
- The Applicants contend that the County's approval contains "conflicts" because the Applicants may be required to meet both Coastal Commission and County mitigation requirements.

Please see Exhibit C for the Applicants' complete appeal document.

5. Procedural History (Post-County Action)

On September 15, 1999, the Commission opened and continued the substantial issue hearing on the appeal because the County had not delivered the Administrative Record on the County's decision to the Commission's Central Coast District office in time for Commission staff to prepare a staff report with a full analysis and recommendation for the Commission's September meeting (note: the County Administrative record was since received on October 1, 1999). Subsequently, the item was scheduled for the Commission's October 1999 hearing in Oceanside. The Applicant requested, and was granted, a postponement from the October hearing agenda in order to ensure that the Applicants' consulting engineering geologist would be able to attend the Commission hearing (see Exhibit K for hearing postponement correspondence).

The Applicant subsequently requested a second postponement (to the January Commission hearing) in order to have adequate time with which to gather materials in support of the unfiled CDP for that portion of the project within the Coastal Commission's coastal permitting jurisdiction (as described earlier). In the interest of hearing both the appeal and the Commission application at the same hearing, this second postponement was likewise granted. Staff has consistently informed the Applicant that the preference



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 11

would be to hear the appeal and the application to the Commission at the same time in the interest of sound public policy and streamlined review. Unfortunately, however, as of the date of this staff report, the additional requested filing materials have not been received and this related CDP application remains unfiled (see Exhibit M for most recent status letter on this application).

While Commission staff would still prefer that the appeal and the related application be heard at the same time, this is not possible without additional postponements. The Applicant has known since August 1999 the materials necessary to file the CDP application with the Commission, and has not submitted these materials; the Applicant was likewise informed in May 1998 of many of the same informational requirements and did not submit any such materials. As such, it is not clear that additional postponements would ensure that the two items could be heard simultaneously. The subject request is for after-the-fact recognition of an unpermitted revetment that has been in place for nearly three years. Additional postponements at this time would not serve the public interest. Commission staff believe that the Applicant has been given ample opportunity to provide materials in support of the unfiled application. Although it creates an unnatural split in the project (in terms of the split CDP jurisdiction), Commission staff believe that it no longer serves any purpose to postpone this matter any further.

In any case, the Applicant has submitted three additional items of information since the County acted on the since appealed CDP: (1) a report by the consulting geologist, Rogers Johnson titled "Response to Coastal Commission Appeal, Appeal No. A-3-SCO-99-056" dated November 22, 1999; (2) Letter from Jerry Smith regarding Corcoran Lagoon habitat issues; and (3) a proposal for an alternative access mitigation. These materials have been used in the preparation of this staff report.

6. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

Motion. *I move that the Commission determine that Appeal Number A-3-SCO-99-056 raises **no** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff Recommendation of Substantial Issue. *Staff recommends a **no** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.*

Resolution To Find Substantial Issue. *The Commission hereby finds that Appeal Number A-3-*



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 12

SCO-99-056 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

7. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development.

Motion. *I move that the Commission approve Coastal Development Permit Number A-3-SCO-99-056 for the development proposed by the Applicant.*

Staff Recommendation of Denial. *Staff recommends a **no** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.*

Resolution To Deny The Permit. *The Commission hereby denies a coastal development permit for the proposed development on the grounds that the project will not conform with the policies of the Santa Cruz County Local Coastal Program, and that it is located between the sea and the first public road nearest the shoreline and it will not conform with the access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

Recommended Findings and Declarations

The Commission finds and declares as follows:

8. Project Description & Background

The proposed revetment is located on the beach and bluffs at Santa Maria Cliffs Beach fronting Corcoran Lagoon at the seaward end of 23rd Avenue in the unincorporated Live Oak area of Santa Cruz County.

8.1 Regional Setting



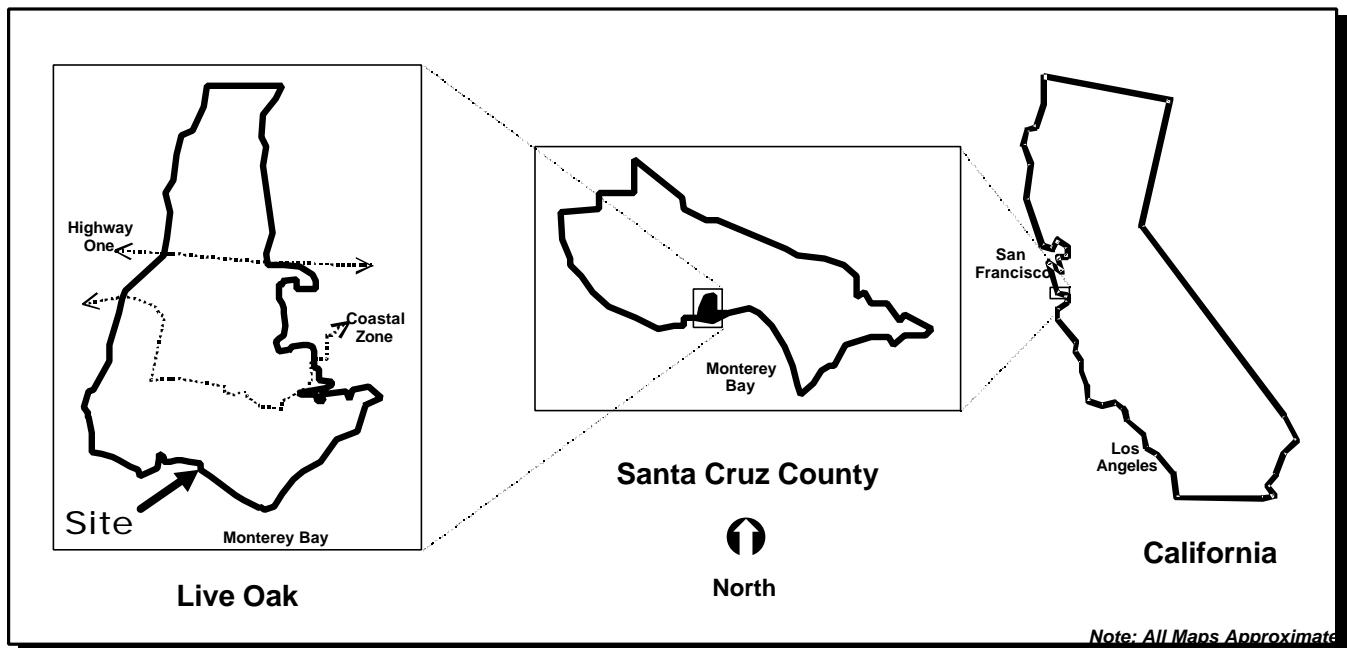
California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 13

Situated on the northern shore of the Monterey Bay, Santa Cruz County is bordered to the north and south by San Mateo and Monterey Counties. Santa Cruz County is characterized by a wealth of natural resource systems ranging from mountains and forests to beaches and the Monterey Bay itself. The Bay has long been a focal point for area residents and visitors alike providing opportunities for surfers, fishermen, divers, marine researchers, kayakers, and boaters, among others. The unique grandeur of the region and its national significance was formally recognized in 1992 when the area offshore became part of the largest federally protected marine sanctuary in the nation.²



Santa Cruz County's coastal setting, its mild climate, and multicultural identity combine to make the area a desirable place to both live and visit. As a result, Santa Cruz County has seen extensive development and regional growth over the years. In fact, Santa Cruz County's population has nearly doubled since 1970 alone with projections showing that the County will be home to over one-quarter of a million persons by the year 2000.³ This growth not only increases the regional need for housing, jobs, roads, urban services, infrastructure, and community services but also the need for parks and recreational areas. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, coastal recreational resources are seen as a critical element in helping to meet these needs. Furthermore, with coastal parks and beaches themselves attracting visitors into the region, an even greater pressure is felt at coastal recreational systems such as that found in Live Oak. With Santa Cruz County beaches

² The Monterey Bay National Marine Sanctuary.

³ Census data from 1970 shows Santa Cruz County with 123,790 persons; by 1996, California Department of Finance estimated that this number had increased to 243,000 persons; Association of Monterey Bay Area Governments (AMBAG) projections show that the population is expected to increase to 259,905 by the year 2000.



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 14

providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the population centers of the San Francisco Bay area and the Silicon Valley nearby, this type of resource pressure is particularly evident in Live Oak.

Live Oak is part of a larger area including the Cities of Santa Cruz and Capitola that is home to some of the best recreational beaches in the Monterey Bay area. Not only are north Monterey Bay weather patterns more conducive to beach recreation than the rest of the Monterey Bay area, but north bay beaches are generally the first beaches accessed by visitors coming from the north of Santa Cruz. With Highway 17 providing the primary access point from the north (including San Francisco and the Silicon Valley) into the Monterey Bay area, Santa Cruz, Live Oak, and Capitola are the first coastal areas that visitors encounter upon traversing the Santa Cruz Mountains. As such, the Live Oak beach area is an important coastal access asset for not only Santa Cruz County, but also the entire central and northern California region.

See Exhibit D for regional location maps.

8.2 Live Oak Area

Live Oak represents the unincorporated segment of Santa Cruz County located between the City of Santa Cruz and the City of Capitola. The Live Oak coastal area is well known for excellent public access opportunities for beach area residents, other Live Oak residents, other Santa Cruz County residents, and visitors to the area. Walking, biking, skating, viewing, surfing, fishing, sunbathing, and more are all among the range of recreational activities possible along the Live Oak shoreline. In addition, Live Oak also provides a number of different coastal environments including sandy beaches, rocky tidal areas, blufftop terraces, and coastal lagoons. These varied coastal characteristics make the Live Oak shoreline unique in that a relatively small area can provide different recreational users a diverse range of alternatives for enjoying the coast. By not being limited to one large, long beach, or solely an extended stretch of rocky shoreline, the Live Oak shoreline accommodates recreational users in a manner that is typical of a much larger access complex.

Primarily residential with some concentrated commercial and industrial areas, Live Oak is a substantially urbanized area with few major undeveloped parcels remaining. Development pressure, particularly for shoreline armoring, has been disproportionately intense for this section of Santa Cruz County.⁴ In fact, much of the Live Oak coastline is armored in some way with rip-rap or seawalls, and the shoreline armoring extending from the Santa Cruz Harbor's east jetty through to the Capitola wharf covers a total area of approximately 4½ acres of sandy beach. Because Live Oak is projected to absorb the majority of the unincorporated growth in Santa Cruz County, development pressure will likely continue to tax Live

⁴ Although the Live Oak shoreline accounts for only about 7% of the Santa Cruz County coast, from 1983-1993 this shoreline accounted for over 20% of the coastal development projects immediately adjacent to the shoreline, and over 36% of the projects associated with shoreline armoring (source: California Coastal Commission Regional Cumulative Assessment Project (ReCAP) Database).



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 15

Oak's public infrastructure (e.g., streets, parks, beaches, etc.).⁵ Given that the beaches are the largest public facility in Live Oak, this pressure will be particularly evident in the beach area.

See Exhibit D for Live Oak area maps.

8.3 Project Location

The proposed project is located on the bluffs and beach fronting the seaward end of 23rd Avenue. The beach at this location is known locally as Santa Maria Cliffs Beach or Corcoran Lagoon Beach. This broad beach extends from a narrow tidal shelf area adjacent to Sunny Cove (upcoast) through to the promontory at Applicant's residence above the beach. Corcoran Lagoon is present both inland (across East Cliff Drive) and temporally between East Cliff Drive and the ocean at this wide beach area below the Applicant's residence. Contrasting this wide sandy beach area at the Corcoran Lagoon inlet area, the beach setting changes quite drastically at this promontory and becomes extremely narrow all the way down to the westernmost outcroppings of rock at Soquel (aka Pleasure) Point (downcoast). This narrow beach is defined on its inland edge by rip-rap protecting residential structures along the blufftop and is most often referred to as 26th Avenue Beach. In fact, the Commission's ReCAP project estimates that almost one acre of the recreational beach area has been covered by revetments along the stretch of 26th Avenue Beach between Corcoran Lagoon and Moran Lake.⁶ See Exhibits D and E.

8.4 Project Description

The existing permitted rip-rap revetment below the Applicant's blufftop residence historically extended along the narrow 26th Avenue Beach frontage, slightly wrapping around the headland at 23rd Avenue and inland towards East Cliff Drive. This existing revetment was initially installed in some form prior to the Coastal Act and has been repaired and maintained several times since. The Applicants now propose to extend this existing revetment inland perpendicular to the ocean along the bluff. The County's action describes this as a 60 linear foot extension; the County-approved site plan shows an approximately 65 foot extension. Commission staff field verification indicates that the proposed extension is actually approximately 100 linear feet. Approximately 500 cubic yards (or roughly 1,200 tons) of rock is involved placed at a approximately 2:1 slope gradient with a 10 foot keyway excavated in the sandstone bedrock below the beach. It is particularly important to note that the revetment is not intended to protect the blufftop residence, but rather is proposed to protect the existing revetment at this site.

The Applicant also proposes a pathway connecting from the existing blufftop foot trail both over the revetment to the forebeach, and along the bluff edge inland towards East Cliff Drive. The path over the revetment would be accomplished through positioning rip-rap; the inland path would be constructed along

⁵ The LCP identifies Live Oak at buildout with a population of approximately 29,850 persons; based on the County's recreational formulas, this corresponds to a park acreage of 150-180 acres. Though Live Oak accounts for less than 1% of Santa Cruz County's total acreage, this projected park acreage represents nearly 20% of the County's total projected park acreage.

⁶ Approximately 1,700 linear feet of shoreline armoring were identified in this stretch as of 1993. Using 20 feet of sand beach coverage as the general width of these structures, this translates to approximately 34,000 square feet of beach now covered by rock. Shoreline armoring since 1993 will have increased this figure.



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 16

the inland edge of the of the bluff with a rock border along its beach edge.

See Exhibit F for proposed project plans.

8.5 Unpermitted Development

In February 1997, the proposed revetment extension was installed without benefit of a coastal development permit. An emergency permit had been issued by the County to repair the existing permitted revetment (County Emergency Permit 4914 E issued 2/7/97), but this emergency permit did not cover the proposed revetment extension. County Emergency Permit 4914 E was for approximately 225 tons of rock (or about 1/5 of that currently proposed) to maintain the *existing* revetment at the site. On February 24, 1997, Commission staff informed the Applicants that the constructed revetment extension was a violation of the Coastal Act's permitting requirements; County staff also informed the Applicants at this time that the work was not covered by County Emergency Permit 4914 E. Subsequently, on May 1, 1997 the Applicants were informed that all unpermitted rock was to be removed.

However, because the unpermitted rock was placed within Corcoran Lagoon, a wetland which may provide habitat for endangered species⁷, Commission staff and County staff in consultation with the California Department of Fish and Game (CDFG) determined that removal of the rock would need to be deferred until water levels in Corcoran Lagoon subsided to the extent that the rock could be removed without endangering these listed species. Ultimately, it was not until November 1997 that Lagoon conditions were conducive to removal of the rock. By this time, predictions of a major El Niño winter storm event were prevalent, and County and Commission staff allowed for a partial removal of the unpermitted rock with the remainder to stay in place until the County had taken an action on the Applicants' request for a revetment extension application (the subject appeal). At that time, a County decision on the unpermitted project seemed imminent and Commission staff determined it was prudent to let the County take its regulatory action prior to the Commission taking action.

Although Commission staff, County staff and the Applicants have had a series of meetings and discussions regarding resolution of the violation and the CDP applications during the course of 1998 and 1999, the County did not take an action on the proposed project application until August 6, 1999. As a result, the majority of the unpermitted rock has now been in place for nearly 3 years (i.e., since February 1997).

⁷ Tidewater goby (*Eucyclogobius newberryi*, Federal Endangered Species), steelhead (*Oncorhynchus mykiss*, Federally Threatened Species), and coho salmon (*Oncorhynchus kisutch*, Federal Threatened Species, State Endangered Species) are all thought to be present in Corcoran Lagoon/Rodeo Creek system.





Consideration of the proposed revetment extension in this staff report is based solely upon the policies contained in the County's LCP, and the Coastal Act's public access and recreation policies as applicable, as if the project had not yet been installed. However, please note that consideration of this application does not constitute an admission as to the legality of any development undertaken on the subject site without benefit of a coastal development permit and shall be without prejudice to the California Coastal Commission's ability to pursue any legal remedy available under Chapter 9 of the Coastal Act.

9. Substantial Issue Findings

In general, the Commissioner Appellants raise issues with respect to the project's conformance with certified Santa Cruz County LCP policies regarding shoreline structures and their associated impacts. Commissioner Appellants generally contend that it has not been clearly demonstrated that there is an existing structure that is significantly threatened as required by the LCP. If such a case could be clearly established, it is not clear that the proposed project would be the least environmentally damaging feasible solution to protect such a threatened existing structure. If it could be demonstrated that the proposed revetment were the least environmentally damaging feasible solution, the coastal resource impacts associated with such a project have not been adequately characterized and mitigated. Public access



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 18

impacts are particularly clouded by property ownership issues. As summarized below, each of these issues raises a substantial issue with respect to the project's conformance with the Santa Cruz County LCP.

In general, the Applicant Appellants raise issues regarding the legality and proportionality of the access mitigations required by the County for the access impacts associated with the proposed revetment. As noted in this staff report, the public access impacts of the proposal are particularly clouded by property ownership issues. As such, the proportionality of access mitigations to access impacts is difficult to measure. To the extent that such issues are LCP issues, these issues too raise a substantial issue with respect to the project's conformance with the Santa Cruz County LCP.

Additional detail supporting these substantial issue findings is provided in the corresponding recommended findings for the coastal development permit.

9.1 Shoreline Structures

9.1.1 Existing Structure

The LUP states that structural shoreline protection measures shall only be used to protect "existing structures, vacant lots which through lack of protection threaten adjacent lots, public works, public beaches, or coastal dependent uses." The IP mirrors this limitation but expands upon what constitutes an existing structure by defining such as "existing residences and business or commercial structures." In this case, the revetment extension is not proposed to protect the blufftop residence, but rather is proposed to protect the existing revetment at this site. In other words, the proposed revetment would protect another revetment. Because the LCP limits protection measures at this location to those designed to protect the existing residence, a substantial issue is raised.

9.1.2 Threat to Existing Structure

The LCP requires demonstration of "a significant threat to an existing structure" if a shoreline protection structure is to be considered. The subject residence is 50 to 75 feet from the break in slope defining the meandering bluff edge at this location and is not currently threatened by shoreline erosion (see page 2 of Exhibit F). As stated by the Applicant's consulting geologist at the time the revetment was installed in 1997, "the [bluff erosion] to date does not threaten the Filizetti residence" (Rogers Johnson, 1/30/97 letter report). The Applicant maintains that the *existing permitted revetment* (fronting the ocean-side bluff) is in danger because a combination of creek induced erosion and oblique surf attack may scour and undermine the end of the existing permitted structure to the point that the end portion might fail, ultimately threatening the blufftop residence.

However, even were the existing revetment to be considered a "structure" allowed shoreline protection, it is not clear from the geologic evidence that there is a "significant threat" to this structure. It is clear that Corcoran Lagoon and Rodeo Creek do meander adjacent to the subject coastal bluff at times. During storm surge conditions, wave runup and creek flow would result in some oblique storm attack at the base of the bluff proposed for armoring. However, although some amount of scouring and erosion is likely, it is not



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 19

clear that such conditions have resulted in a significant threat to the existing revetment. In fact, the Applicant's consulting geologist has indicated that the bluff has changed little at this location in over 70 years: "the loss of the aforementioned promontory [a chunk of bluff that eroded away in the 1983 storms] is the only measurable retreat observed since the first aerial photographs [dating from 1928]" (Rogers Johnson, 11/22/99 letter report; see Exhibit G for the site plan view of this 1983 retreat event). In other words, there has been only one erosional event in the past 70 years, and no measurable retreat at this location since 1983. This is consistent with Commission staff site observations over the years. Accordingly, it is not clear that there is a "significant threat" to the revetment at this location. Because the LCP requires demonstration of a significant threat to allow structural protection, a substantial issue is raised.

9.1.3 Alternatives to Shoreline Protection

Even were it to have been demonstrated that an existing structure for which protective measures were allowed was significantly threatened at this location, the LCP requires a "thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure." Moreover, the LCP only allows structural measures "if non-structural measures...are infeasible from an engineering standpoint or not economically viable." In this case, it appears that "relocation or partial removal" of the existing revetment is a reasonable engineering solution. In other words, as the bluff retreats on the inland bluff side of the subject area, the tapered end of the existing revetment subject to additional scour from the backside could be recontoured so that the revetment continues to front the ocean-side bluff and protect the blufftop residence. Such maintenance of existing revetments to ensure that they are operating correctly is more reasonable from a policy standpoint than would be a revetment to protect a revetment. The Commission's staff engineer has evaluated the project and determined that such an option is indeed feasible at this location.

In addition, other soft approaches may be feasible in this case. The Applicant's consulting geologist concluded in 1997 that although not as effective as rip-rap if there is an "intense, prolonged rainy season," "softer approaches such as revegetation and drainage control may alleviate the problem" (Rogers Johnson, 5/27/97 letter report). The "no project" alternative likewise appears feasible in this case since the Applicant's consulting geologist has indicated that there has been no measurable erosion since 1983 and the existing residence is not threatened at this time. In the evaluation of the no project alternative, the consulting geologist indicates that "if the slope proposed for protection is unprotected, it will gradually be eroded at its base, causing time-lagged slope failures that will eventually affect the Filizetti property" (Rogers Johnson, 5/27/97 letter report). Over time, most all unprotected coastal bluffs will erode – this is what bluffs do naturally. The fact that such erosion over time may "eventually affect the Filizetti property" is not sufficient to dismiss the "no project" alternative. Moreover, it is the existing revetment that is being protected according to the County findings and conditions, not the residence. Because the LCP only allows structural protection if non-structural measures are infeasible, and non-structural measures including, but not limited to, the no project alternative and maintenance of the existing revetment to recontour its end-point are feasible, a substantial issue is raised.

9.1.4 Sand Supply Impacts



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 20

The LCP requires that “the protection structure must not...adversely affect shoreline processes and sand supply.” The County asserts that this is the case, however, there is no discussion of this issue (or supporting documentation) in the County findings. The Commission’s experience statewide has been that shoreline protection structures have a significant and measurable effect on shoreline process and sand supply. The proposed revetment would cover the toe and front of a coastal bluff. Bluff materials that would have contributed to the sand supply regime would be retained by such a structure, and the back beach location would be fixed to the detriment of the recreational beach area at this location as the shoreline migrates inland. The project includes no mitigation for this impact. Because of this, a substantial issue is raised.

9.2 Public Access

The proposed project takes place primarily on parcel number 028-231-01. A portion of parcel number 028-231-01 is within the County’s coastal permit jurisdiction and a portion is within the Commission’s jurisdiction (see Exhibits E and F). Parcel number 028-231-01 is identified in the LCP as a “Coastal Priority Site” that is reserved for “acquisition and improvement of beach parcels for coastal access, recreation and protection of coastal biotic habitat.” The LCP requires a master plan for development at this site. Because the County did not consider or approve a master plan for the coastal priority site, a substantial issue is raised.

The LCP requires that any necessary shoreline protective structures (i.e., those that meet policy tests for need as described above) “must not reduce or restrict public beach access.” The portion of the revetment within the County’s jurisdiction also takes place partially on the 23rd Avenue road right-of-way (see Exhibits E and F). The proposed project will block existing physical access to the beach currently available through this right-of-way area (see Exhibit F). The County approval includes conditions for an offer to dedicate and a reestablished trail across this area. These requirements are the basis of the appeal by Appellants (and Applicants) Filizetti and Hooper.

In any case, however, the Applicant does not own the 23rd Avenue right-of-way property which would be dedicated. The County approval also includes a condition for the Applicant to obtain an ownership interest in the right-of-way parcel through a “quit-claim” from the County. The County approval does not discuss the ramifications of the property ownership of this parcel. This right-of-way is either: (1) public property; (2) private property where the public has established a prescriptive access right; or (3) private property where the public has not established a prescriptive access right. In any case, the public has used this area for many, many years as a beach access and blufftop viewing location. Lacking evidence to the contrary, the rebuttable presumption is that the public owns or has established prescriptive access rights on the 23rd Avenue road right-of-way. Because public access ramifications of the blocked trail, offer to dedicate, and right-of-way ownership issues are unclear, a substantial issue is raised.

9.3 Visual Resources

The LCP requires the protection of the public vista from the beach and East Cliff Drive at this location through “minimizing disruption of landform and aesthetic character.” The LCP also encourages the



California Coastal Commission

development of coastal vistas at this location and protects this coastal blufftop area from intrusion by non-recreational structures and incompatible uses. LCP policies as a whole speak to the need to minimize development in sight of the public viewshed. The existing rip-rap (i.e., that rip-rap in place prior to the unauthorized placement of rock), did not wrap fully around the bluff and was only minimally visible from the East Cliff Drive scenic corridor. However, the proposed rip-rap would extend around the bluff and further northward towards East Cliff Drive creating a substantial visual impact. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large, unnatural pile of rock in front of the previously unadorned bluff which would essentially redefine the scenic corridor. It has not been demonstrated that the proposed revetment extension is necessary to protect an existing structure that is significantly threatened. In fact, as described above, it appears that a lesser project (or no project) is a feasible alternative. Such a reduced project would better “minimize disruption of landform and aesthetic character” as required by the LCP. As such, a substantial issue is raised.

9.4 Wetland and Other Environmentally Sensitive Habitats

Since only the portion of the site above the toe of the bluff is within the County’s coastal permitting jurisdiction, the wetland and other ESHA issues are primarily applicable to the Commission’s original jurisdiction area. As previously indicated, the portion of the project in the Commission’s jurisdiction is the subject of unfiled CDP application 3-97-027 (see Exhibit M). To the extent that any wetland and other ESHA is in the County’s jurisdiction, or is affected by the County’s coastal permit decision, the following substantial issue determination applies.

The LCP requires an area to be defined as “sensitive habitat” if it includes a wetland or stream, or if listed species are present. The LCP further requires a biotic assessment of these areas “as part of normal project review to determine whether a full biotic report should be prepared.” The project proposes to place rock within the boundaries of an area seasonally occupied by Corcoran Lagoon and/or Rodeo Creek. This system may provide habitat for listed species⁸. Per the LCP, this area is considered ESHA. As such, a biotic assessment is required. Because no such assessment or report was conducted for this project, a substantial issue is raised.

The LCP only allows uses that are dependent on ESHA resources within ESHAs with minor exceptions (that are inapplicable to this case – see CDP ESHA findings). The County’s findings do not discuss any such ESHA policy issues, and the County staff report indicates that there is no ESHA at this location. The County has recognized that a Federally Endangered Species is present (Tidewater goby (*Eucyclogobius newberryi*), and includes a condition disallowing construction activities when this species is present, but this is the only discussion of ESHA impacts and policy consistency. The LCP prohibits development in wetlands and riparian corridors unless an exception is granted per the LCP’s Riparian Corridor and Wetlands Protection ordinance; no such exception was applied for or granted in this case. Because the project does not meet the LCP’s ESHA criteria, a substantial issue is raised.

⁸ Tidewater goby (*Eucyclogobius newberryi*, Federal Endangered Species), steelhead (*Oncorhynchus mykiss*, Federally Threatened Species), and coho salmon (*Oncorhynchus kisutch*, Federal Threatened Species, State Endangered Species) are all thought to be present in Corcoran Lagoon/Rodeo Creek system.



10. Coastal Development Permit Determination

By finding a substantial issue in terms of the project's conformance with the certified LCP, the Commission takes jurisdiction over the CDP for that portion of the proposed project within the County's jurisdiction. The standard of review for this CDP determination is the County LCP and the Coastal Act's access and recreation policies. The substantial issue discussion above is incorporated herein by reference.

10.1 Geologic Conditions and Hazards

10.1.1 LCP Policies

The LCP addresses shoreline protective structures primarily through LUP Policy 6.2.16 (Structural Shoreline Protection Measures) and IP Section 16.10.070(g)(5) (Coastal Bluffs and Beaches Permit Conditions):

LUP Policy 6.2.16 Structural Shoreline Protection Measures. *Limit structural shoreline protection measures to structures which protect existing structures, vacant lots which through lack of protection threaten adjacent developed lots, public works, public beaches, or coastal-dependent uses. Require any application for shoreline protective measures to include a thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure, protection of the upper bluff or area immediately adjacent to the threatened structure, and engineered shoreline protection such as beach nourishment, revetments, or vertical walls. Permit structural protection measures only if non-structural measures (e.g., building relocation or change in design) are infeasible from an engineering standpoint or not economically viable. The protection structure must not reduce or restrict public beach access, adversely affect shoreline processes and sand supply, increase erosion on adjacent properties, or cause harmful impacts on wildlife and fish habitats or archeological or paleontological resources. The protection structure must be placed as close as possible to the development requiring protection and must be designed to minimize adverse impacts to recreation and to minimize visual intrusion. Shoreline protection structures shall be designed to meet approved engineering standards for the site as determined through the environmental review process. Structural protection measures should only be considered where a significant threat to an existing structure exists, or where seawalls have been constructed on adjoining parcels. Detailed technical studies will be required to accurately define the oceanographic conditions affecting the site. All shoreline protective structures shall incorporate permanent survey monuments for future use in establishing a survey monument network along the coast for use in monitoring seaward encroachment or slumping of revetments and erosion trends. No approval shall be given for shoreline protective structures that do not include permanent monitoring and maintenance programs. Such programs shall include a report to the County every five years or less, as determined by a qualified professional, after construction of the structure, detailing the condition of the structure and listing any recommended maintenance work. Maintenance programs shall be recorded and shall allow for County removal or repair of a shoreline protective structure, at the owner's expense, if its*



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 23

condition creates a public nuisance or if necessary to protect public health and safety.

IP Section 16.10.070(g)(5). *Shoreline protection structures shall be limited to structures which protect existing residences and business or commercial structures, vacant lots which through lack of protection threaten adjacent developed lots, public works, public beaches, or coastal dependent uses. Structural protection measures shall be permitted only if non-structural measures (i.e. building relocation or change in design) are infeasible from an engineering or economic standpoint. Seawall construction shall be considered only where a significant threat to an existing structure exists, where seawalls have been constructed on adjoining parcels and where rip-rap would not adequately protect the structure. The protection structure shall be designed to meet adequate engineering standards based on the geologic hazards assessment or other detailed technical information. The protection structure shall not: (i) reduce or restrict public beach access; (ii) adversely affect shoreline processes and sand supply; (iii) increase erosion on adjacent properties; (iv) cause harmful impacts on wildlife and fish habitats; (v) be placed further than necessary from the development requiring protection; or (vi) create a significant visual intrusion.*

In addition, LUP Policy 6.2.18 specifically prohibits new structures in coastal hazard areas in most cases:

LUP Policy 6.2.18 Prohibit New Structures In Coastal Hazard Areas. *...Prohibit new structures, public facilities, and service transmission systems in coastal hazard areas unless they are necessary for existing residences or to serve vacant lots which through lack of protection threaten adjacent developed lots, public facilities, public beaches or coastal dependent uses.*

These policies generally allow for shoreline protection when it has been demonstrated that “existing structures, vacant lots which through lack of protection threaten adjacent lots, public works, public beaches, or coastal dependent uses” are “significantly threatened.” Such structural protection is only allowable when non-structural measures are infeasible, and when such protection does not reduce public beach access, adversely affect shoreline processes and sand supply, or negatively impact habitat. On the whole, these LCP policies recognize that structural shoreline protection measures have negative resource impacts and are to be utilized sparingly – and only when it can be demonstrated that such measures are warranted and appropriately mitigated.



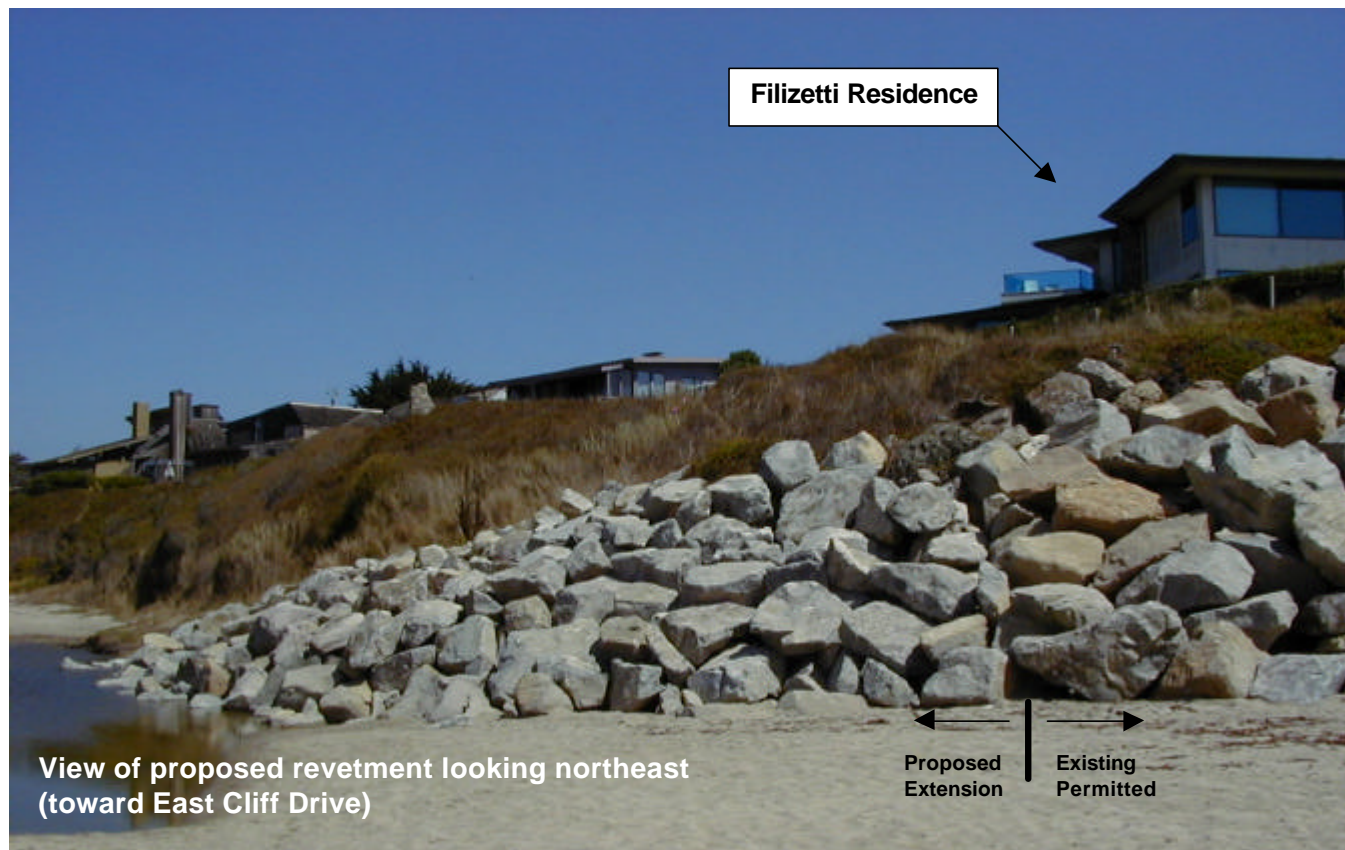
California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 24

Under the LCP, the first and most important analytical test of this policy is to determine whether or not there is an existing structure in danger from erosion.



10.1.2 Defining the Existing Structure

The LUP states that structural shoreline protection measures shall only be used to protect “existing structures, vacant lots which through lack of protection threaten adjacent lots, public works, public beaches, or coastal dependent uses.” The IP mirrors this limitation but expands upon what constitutes an existing structure by defining such as “existing residences and business or commercial structures.” In this case, the revetment extension is not proposed to protect the blufftop residence, but rather is proposed to protect the existing revetment between the residence and the ocean at this site. In other words, the proposed revetment would protect another revetment.

The existing revetment is not a residence, business or commercial structure and does not constitute a structure for the purposes of LUP Policy 6.2.16 and IP Section 16.10.070(g)(5). The revetment proposed to be protected is an accessory structure put in place for the sole purpose of protecting the principal residential use atop the coastal bluff. Accessory Structure is defined in the LCP as follows:

IP Section 13.10.700-S (“S” Definitions) Structure, Accessory. A detached, subordinate



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 25

structure, or a subordinate structure attached to a main structure by a breezeway, the use of which is appropriate, subordinate and customarily incidental to that of the main structure or the main use of the land and which is located on the same site with the main structure or use.

Further distinguishing the existing revetment as an accessory structure are the LUP and Zoning designations for the property in question. The LUP designation for the site is “Existing Parks and Recreation” and the beach and 23rd Avenue road right-of-way are zoned “Parks, Recreation and Open Space” (PR). Revetments are only allowed in the PR district as “accessory structures and uses.”⁹

The Commission has generally interpreted LCP and Coastal Act policies to allow shoreline protection only for existing *principal* structures. The Commission must always consider the specifics of each individual project, but has found that accessory structures (such as patios, decks, gazebos, stairways, etc.) are not required to be protected or can be protected from erosion by relocation or other means that do not involve shoreline armoring.

The only structure at this location that would qualify for shoreline protection under the LCP (were such protective measures otherwise deemed necessary and accompanied by appropriate mitigations) is the blufftop residence. The existing revetment at the site is an accessory structure that does not constitute an “existing structure” for the purposes of LUP Policy 6.2.16 or IP Section 16.10.070(g)(5). To find otherwise is to find that a pile of rock on the beach is a principal structure for which shoreline protection can be pursued. Such a finding would imply that the remainder of the armored coastline in Santa Cruz County could likewise be protected with separate shoreline structures. The end result of such a line of reasoning would allow seawalls or revetments to be placed seaward of existing seawalls or revetments in order to protect these “existing structures.” What would likely follow would be proposals to backfill these new lines of shoreline defense to create additional blufftop space at the expense of beach space. It is unclear how many iterations of such shoreline protective structures might ultimately be pursued at any location under such a policy interpretation.

10.1.3 Defining the Threat to the Existing Structure

The LCP requires demonstration of “a significant threat to an existing structure” if a shoreline protection structure is to be considered. Moreover, LUP Policy 6.2.18 prohibits new structures in coastal hazard areas (such as the subject site) “unless they are necessary for existing residences.”¹⁰ In this case, the subject residence is 50 to 75 feet from the break in slope defining the meandering bluff edge at this location and is not currently threatened by shoreline erosion (see Page 2 of Exhibit F). As stated by the Applicant’s consulting geologist at the time the revetment was installed in 1997, “the [bluff erosion] to date does not threaten the Filizetti residence” (Rogers Johnson, 1/30/97 letter report). Because the existing residence at this location is not threatened without installation of the proposed revetment, the project is

⁹ In any case, these accessory structures and uses must be according to a Master Site Plan (per IP Section 13.10.355) for the site in question; there is no such plan in place here (IP Section 13.10.352). Moreover, any such allowable accessory structures are to be “subordinate and incidental to the main structure or main use of the land” pursuant to IP Section 13.10.611 (IP Section 13.10.352).

¹⁰ Policy 6.2.18 likewise allows new structures in coastal hazard areas if necessary “to serve vacant lots which through lack of protection threaten adjacent developed lots, public facilities, public beaches, or coastal dependent uses.” However, these other specifications do not apply to this project.



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 26

inconsistent with LUP Policies 6.2.16 and 6.2.18, and with IP Section 16.10.070(g)(5).

The Applicant maintains that the *existing permitted revetment* (fronting the ocean-side bluff) is in danger because a combination of creek induced erosion and oblique surf attack may scour and undermine the end of the existing permitted structure to the point that the end portion might fail, ultimately threatening the blufftop residence. However, even if the existing revetment could be considered a “structure” allowed shoreline protection (which it is not as described above), it is not clear from the geologic evidence that there is a “significant threat” to this revetment structure. It is clear that Corcoran Lagoon and Rodeo Creek do meander adjacent to the subject coastal bluff at times. During storm surge conditions, wave runup and creek flow would result in some oblique storm attack at the base of the bluff proposed for armoring. However, although some amount of scouring and erosion is likely, it is not clear that such conditions have resulted in a significant threat to the existing revetment. In fact, the Applicant’s consulting geologist has indicated that the bluff has changed little at this location in over 70 years: “the loss of the aforementioned promontory [a chunk of bluff that eroded away in the 1983 storms] is the only measurable retreat observed since the first aerial photographs [dating from 1928]” (Rogers Johnson, 11/22/99 letter report). In other words, there has been only one erosional event in the past 70 years, and no measurable retreat at this location since 1983. Moreover, according to the Applicant’s consulting geologist, the 1983 erosion event took place in an area currently covered by the existing permitted revetment – **no** measurable erosion has taken place in the area proposed for the revetment extension (Rogers Johnson, 11/22/99 letter report, Plate 1; see Exhibit G). This is consistent with Commission staff site observations over the past 25 years.

Accordingly, there is not a “significant threat” to either the residence or the existing revetment at this location. Lacking a demonstrable significant threat, the proposed revetment extension is unnecessary and is inconsistent with LUP Policies 6.2.16 and 6.2.18, and with IP Section 16.10.070(g)(5).

10.1.4 Alternatives to Shoreline Protection

Even if it were to have been demonstrated that an existing structure for which protective measures were allowed was significantly threatened at this location, the LCP requires a “thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure” (LUP Policy 6.2.16). Moreover, the LCP only allows revetments “if non-structural measures...are infeasible from an engineering standpoint or not economically viable” (LUP Policy 6.2.16; also IP Section 16.10.070(g)(5)).

In this case, “relocation or partial removal” of the existing revetment is a reasonable engineering solution. In other words, as the bluff retreats on the inland bluff side of the subject area, the tapered end portion of the existing revetment subject to additional scour from the backside (i.e., the northernmost terminus of the existing revetment) could be recontoured so that the revetment continues to front the ocean-side bluff and protect the blufftop residence as it was originally designed to do. Such maintenance of existing revetments to ensure that they are operating correctly is more reasonable from a policy standpoint than would be a revetment to protect a revetment. The Commission’s staff engineer has evaluated the project and determined that such an option is indeed feasible at this location.

In addition, other soft approaches may be feasible in this case. The Applicant’s consulting geologist



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 27

concluded in 1997 that although not as effective as rip-rap if there is an “intense, prolonged rainy season,” “softer approaches such as revegetation and drainage control may alleviate the problem” (Rogers Johnson, 5/27/97 letter report). The “no project” alternative likewise appears feasible in this case since the Applicant’s consulting geologist has indicated that there has been no measurable erosion since 1983 and the existing residence is not threatened at this time. In the evaluation of the no project alternative, the consulting geologist indicates that “if the slope proposed for protection is unprotected, it will gradually be eroded at its base, causing time-lagged slope failures that will eventually affect the Filizetti property” (Rogers Johnson, 5/27/97 letter report). Over time, most all unprotected coastal bluffs will erode – this is what bluffs do naturally. The fact that such erosion over time may “eventually affect the Filizetti property” is not sufficient to dismiss the “no project” alternative. Moreover, it is the existing revetment that is being protected according to the County findings and conditions, not the residence.

There are several alternatives to the ± 100 foot revetment extension that are feasible in this case and which would not involve the substantial negative impacts to coastal resources that would be expected from the proposed project (as described in the findings below). The most LCP-consistent solution would be maintenance of the existing revetments to restack and recontour the end of the wall where it is subject to flanking and creek/lagoon erosion. The Commission’s staff engineer has concluded that this is indeed a feasible engineering solution at this location. Accordingly, the proposed revetment extension is unnecessary and is inconsistent with LUP Policies 6.2.16 and 6.2.18.

10.1.5 Sand Supply Impacts

The LCP requires that “the protection structure must not...adversely affect shoreline processes and sand supply” (LUP Policy 6.2.16; also IP Section 16.10.070(g)(5)). The County asserts that this is the case, however, there is no discussion of this issue in the County findings. The Commission’s experience statewide has been that shoreline protection structures have a significant and measurable effect on shoreline process and sand supply. The natural shoreline processes referenced in LUP Policy 6.2.16 and IP Section 16.10.070(g)(5), such as the formation and retention of sandy beaches, can be significantly altered by construction of protective structures, since bluff retreat is one of several ways that beach quality sand is added to the shoreline. Bluff retreat and erosion is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse, saturation of the bluff soil from ground water causing the bluff to slough off and natural bluff deterioration. Shoreline armoring directly impedes these natural processes.

Beach material comes to the shoreline from inland areas, carried by rivers and streams; from offshore deposits, carried by waves; and from coastal dunes and bluffs, becoming beach material when the bluffs or dunes lose material due to wave attack, landslides, surface erosion, gullyng, et cetera. Coastal dunes are almost entirely beach sand, and wind and wave action often provide an on-going mix and exchange of material between beaches and dunes. Many coastal bluffs are marine terraces – ancient beaches which formed when land and sea levels differed from current conditions. Since the marine terraces were once beaches, much of the material in the terraces is often beach quality sand or cobble, and a valuable contribution to the littoral system when it is added to the beach. While beaches can become marine terraces over geologic time, the normal exchange of material between beaches and bluffs is for bluff erosion to provide beach material. When the back beach or bluff is protected by a shoreline protective



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 28

device, the natural exchange of material either between the beach and dune or from the bluff to the beach will be interrupted and, if the shoreline is eroding, there will be a measurable loss of material to the beach. Since sand and larger grain material is the most important component of most beaches, only the sand portion of the bluff or dune material is quantified as beach material.

Some of the effects of engineered armoring structures on the beach (such as scour, end effects and modification to the beach profile) are temporary or difficult to distinguish from all the other actions which modify the shoreline. Such armoring also has distinct qualitative impacts to the character of the shoreline and visual quality. However, some of the effects that a structure may have on natural shoreline processes can be quantified, including: 1) loss of the beach area on which the structure is located; 2) the long-term loss of beach which will result when the back beach location is fixed on an eroding shoreline; and 3) the amount of material which would have been supplied to the beach if the back beach or bluff were to erode naturally.

In this case, the proposed revetment would extend primarily inland along the bluff headland fronting 23rd Avenue. Recreational sandy beach area that would be covered by such a revetment is in the Commission's coastal permitting jurisdiction and is the subject of unfiled CDP application 3-97-027. As such, the loss of the beach area on which the structure would be located is covered by this related application. Furthermore, although the proposed revetment would tie into an existing revetment fronting the subject residence on the ocean side of the property (originally installed pre-Coastal Act), it would not itself fix the back beach location at this site. The back beach was effectively "fixed" when the existing, permitted, pre-Coastal Act on-site revetment was installed years ago. Thus, the sand supply impact applicable to the County's action is limited to the retention of sand generating bluff materials.

The subject site is located within the Santa Cruz Littoral Cell. The Santa Cruz Cell is a high volume cell with annual longshore transport estimated between 300,000 and 500,000 cubic yards of beach quality materials annually. The dominant direction of longshore transport in this sand supply system is north north-west to south south-east; at the subject site, this translates roughly into a west to east distribution. Materials in this system have been estimated to come mainly from coastal streams (roughly 75%), with 20% coming from bluffs such as the subject site, and 5% coming from coastal ravines and sand dunes.¹¹

The quantifiable loss of sand to the Santa Cruz Littoral Cell that would be due to the proposed revetment extension would be the volume of total material which would have gone into the sand supply system over the lifetime of the proposed shoreline protective device (applicable only to the County's coastal permitting jurisdiction). This volume of material would be the area between (a) the likely future bluff face location with shoreline protection; and (b) the likely future bluff location without shoreline protection. The Commission generally applies a sand supply calculation to determine this volume of material

In this case, however, the Applicant's consulting engineer has indicated that there has been no measurable erosion at the location of the proposed revetment in over 70 years (Rogers Johnson, 11/22/99 letter report). As such, the long-term bluff retreat rate at the proposed revetment location is essentially zero; the

¹¹ Adapted from the Coastal Commission's March 1994 ReCAP project report for the Monterey Bay titled: *Preliminary Report on Resource Status and Change*.



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 29

result is that the volume of material that would be retained due to the proposed revetment would also be essentially zero. In other words, since the bluff is not retreating at this location, a revetment would not result in the loss of materials that would have been supplied to the Santa Cruz Littoral Cell sand supply system. More importantly, since the bluff is not retreating, the revetment extension is not necessary (as described above).

10.1.6 Geologic Conditions and Hazards Conclusion

The existing revetment at the site does not constitute an existing structure for which shoreline armoring can be pursued under the LCP. In any case, neither the existing blufftop residence nor the existing permitted revetment at the site are significantly threatened as required by the LCP to allow for shoreline armoring. Furthermore, there are feasible alternatives for maintaining the existing revetment, including those that do not involve extending the revetment, that would allow this existing structure to continue to protect the blufftop residence as it was originally designed to do. The “no project” alternative is likewise feasible given the lack of significant retreat or coastal erosional danger to LCP-defined existing structures at this location. As such, the Commission finds that the proposed revetment request is unnecessary and inconsistent with the certified LCP policies discussed in this finding and is therefore denied.

10.2 Public Access and Recreation

10.2.1 Applicable Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” Because this project is located seaward of the first through public road (East Cliff Drive), for public access and recreation issues the standard of review is not only the certified LCP but also the access and recreation policies of the Coastal Act.

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

***Section 30210** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211.** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 30

Section 30213. *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred....*

Section 30214(a). *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case...*

Section 30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30223. *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30240(b) also protects parks and recreation areas. Section 30240(b) states:

Section 30240(b). *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The LCP also protects existing public access and describes the need to obtain access easements. The LCP states:

LUP Policy 7.7.10 Protecting Existing Beach Access. *Protect existing pedestrian...access to all beaches to which the public has a right of access, whether acquired by grant or through use, as established through judicial determination of prescriptive rights.... Protect such beach access through permit conditions such as easement dedication...*

LUP Policy 7.6.3 Utilization of Existing Easements. *Seek to utilize existing publicly owned lands where possible to implement the trail system, subject to policy 7.6.2.*

LUP Policy 7.7.4 Maintaining Recreation Oriented Uses. *Protect the coastal blufftop areas and beaches from intrusion by nonrecreational structures and incompatible uses to the extent legally possible without impairing the constitutional rights of the property owner, subject to policy 7.6.2.*

LUP Policy 7.6.2 Trail Easements. *Obtain trail easements by private donation of land, by public purchase, or by dedication of easements...*

LUP Policy 7.7.11 Vertical Access. *Determine whether new development may decrease or otherwise adversely affect the availability of public access, if any, to beaches and/or increases the recreational demand. If such impact will occur, the County will obtain as a condition of new*



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 31

development approval, dedication of vertical access easements adequate to accommodate the intended use, as well as existing access patterns, if adverse environmental impacts and use conflicts can be mitigated, under the following conditions: (b) Within the Urban Services Line: from the first public road to the shoreline if there is not dedicated access within 650 feet....

LUP Policy 7.7.12 Lateral Access. *Determine whether new development would interfere with or otherwise adversely affect public lateral access along beaches. If such impact will occur, the County will obtain...dedication of lateral access along bluff tops where pedestrian and/or bicycle trails can be provided and where environmental and use conflict issues can be mitigated....*

IP Section 15.01.060(b) Trail and Beach Access Dedication. *As a condition of approval for any permit for a residential, commercial, or industrial project, an owner shall be required to dedicate an easement for trail or beach access if necessary to implement the General Plan or the Local Coastal Program Land Use Plan.*

LCP access and recreation policies otherwise specifically applicable to the subject site include:

LUP Policy 2.22.1 Priority of Uses within the Coastal Zone. *Maintain a hierarchy of land use priorities within the Coastal Zone:*

First Priority: Agriculture and coastal-dependent industry

Second Priority: Recreation, including public parks; visitor serving commercial uses; and coastal recreation facilities.

Third Priority: Private residential, general industrial, and general commercial uses.

LUP Policy 2.22.2 Maintaining Priority Uses. *Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.*

LUP Policy 2.23.2 Designation of Priority Sites. *Reserve the sites listed in Figure 2-5 for coastal priority uses as indicated. Apply use designations, densities, development standards, access, and circulation standards as indicated.*

LUP Policy 2.23.3 Master Plan Requirements for Priority Sites. *Require a master plan for all priority sites, with an integrated design providing for full utilization of the site and a phasing program based on the availability of infrastructure and projected demand. Where priority use sites include more than one parcel, the master plan for any portion shall address the issues of site utilization, circulation, infrastructure improvements, and landscaping, design and use compatibility for the remainder of the designated priority use site. The Master Plan shall be reviewed as part of the development permit approval for the priority site.*

LCP Figure 2-5 identifies the beach parcel at this location as one of the “Coastal Priority Sites – Live Oak” (APN 028-231-01). This parcel is subject to the following special development standards:

LUP Coastal Priority Site – APN 028-231-01



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 32

Designated Priority Use: *“Existing Park, Recreation & Open Space”: Acquisition and improvement of beach parcels for coastal access, recreation and protection of coastal biotic habitat.*

Special Development Standards: *Locate permanent public recreational support facilities, as feasible, above the area subject to coastal inundation.*

Circulation and Public Access Requirements: *Provide coastal access parking as feasible.*

LUP Policy 7.7.1 Coastal Vistas. *Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches...*

LUP Policy 7.7.18 Areas Designated for Neighborhood Public Access. *Maintain a system of neighborhood access points appropriate for access by local residents at the following locations...23rd Avenue....*

LUP Policy 7.7.19 Improvements at Neighborhood Access Points. *Provide, encourage, and/or require provision of the following improvements appropriate to neighborhood access points: path improvements and maintenance; bicycle parking; recycling; garbage collection; and law enforcement...*

10.2.2 Property Ownership Issues – 23rd Avenue

The proposed project would take place primarily on the open beach parcel (parcel number 028-231-01) and partially on the 23rd Avenue road right-of-way. The beach parcel is owned by Applicant Hooper. However, neither of the Applicants own the 23rd Avenue right-of-way property. Applicant Filizetti does not own any of the land on which the proposed revetment would be placed; Mr. Filizetti's residence is, however, atop the coastal bluff and existing revetment at this location. See Exhibits E and F.

The 23rd Avenue road right-of-way extends from East Cliff Drive (inland of the site) through to the Monterey Bay. Historically, 23rd Avenue connected through to the former location of East Cliff Drive, which historically ran laterally between the row of houses (extending south of the site) and the ocean at this location. This beach-fronting segment of East Cliff Drive was long ago lost to coastal erosion and the roadway realigned inland. 23rd Avenue itself is currently a narrow street which provides paved access to four existing homes on the southeast side of the road. The pavement stops at the fourth home. The right-of-way, however, continues through to the ocean. Undeveloped bluff and beach areas are within this right-of-way area, as is a portion of the existing permitted revetment fronting the Filizetti residence. See Exhibit E.

The property ownership status of the 23rd Avenue right-of-way remains unresolved as of the date of this staff report. The County's findings do not discuss the ramifications of the property ownership of this road right-of-way. Parcel maps for this area are inconclusive. However, it is clear that the 23rd Avenue right-of-way is not shown as a separate parcel on parcel maps for the area (again, see Exhibit E). This is unlike other *private* roadways in the area such as 22nd Avenue (aka Coastview Drive) directly inland of the subject site which *is* a privately owned separate parcel on which taxes are paid. The implication is that



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 33

the 23rd right-of-way, like other right-of-ways in the area, came under the public trust when the it was offered to the County at the time of the original subdivision in the late 1800s. The County has since renamed this roadway (from Moran Drive to 23rd Avenue) and there has been a long history of public use as evidenced in part by the existing meandering trail to the beach at this location.

This right-of-way in the County's CDP jurisdiction is either: (1) public property; (2) private property where the public has established a prescriptive access right; or (3) private property where the public has not established a prescriptive access right. The County has acknowledged that the *Applicants* do not own the right-of-way by conditioning their approval for the Applicant's to obtain a quit-claim to the property from the County (County Condition II.C, see Exhibit A). Even if it were conclusively shown that the right-of-way were not public, the public has used this area for many, many years as a beach access and blufftop viewing location and the Commission is unaware of any restrictions that have been placed over the years on this long public use. Although only a court of law can establish or extinguish prescriptive rights of access, it would appear that *if* the public does not already own the right-of-way, the public may have established a prescriptive right of access at this location. In any case, from the evidence identified to date, it appears that the public owns or has established prescriptive access rights on the 23rd Avenue road right-of-way. Lacking evidence to the contrary, this is the rebuttable presumption at this location.

The County conditioned their approval to require the Applicant to obtain an ownership interest in the right-of-way parcel through a "quit-claim" from the County. Establishing ownership in this way is backwards to basic permitting requirements for showing an ownership interest in the property for which development is proposed. In this case, the County would need to be a co-applicant as the right-of-way property in question appears to be owned by the public, as are the other County roadways in the vicinity.

In any case, 23rd Avenue is designated in the LCP as a neighborhood accessway for which the development of pathways and public amenities is to be pursued (LUP Policies 7.7.18 and 7.7.19). LUP Policy dictates that such publicly owned lands be utilized where possible for pedestrian trails. Likewise, 23rd Avenue provides a stunning coastal vista to the northwest for which the LCP encourages the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches (LUP Policy 7.7.1).



View from 23rd Avenue blufftop right of way area looking west

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 34

This right-of-way is valuable coastal property for which the LCP dictates public uses. A “quit-claim,” as at least preliminarily agreed to by the County, would represent a gift of these lands to the Applicants. In urban recreational coastal areas such as Live Oak, where recreational amenities are in high demand, where land available for such amenities is limited, and where coastal land costs are exorbitant, such a gift of public lands is particularly senseless in light of LCP and Coastal Act policies protecting public access at this location.

The development of such public lands with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure significantly threatened (as discussed earlier), and that would displace other potential LCP-described priority uses of the right-of-way, is inconsistent with LCP Policies 2.22.1, 2.22.2, 7.7.1, 7.7.18, 7.7.19 and Coastal Act Policies 30210, 30211, 30213, 30221, 30223 which protect this 23rd Avenue right-of-way area for public recreational uses. In addition, such a revetment extension would unnecessarily degrade the adjacent beach recreational area through the presence of an unnatural pile of rocks displacing recreational beach use. As such, the project is also inconsistent with Coastal Act Section 30240(b) protecting the adjacent beach areas from significant degradation.

10.2.3 Coastal Priority Site – Beach Parcel

The majority of the revetment extension would take place on the open beach parcel below the coastal bluff at this location. This beach parcel (parcel number 028-231-01) encompasses much of the sandy beach seaward of East Cliff Drive at this location, extending between the 23rd Avenue right-of-way and two beach parcels to the north and west (a County owned beach parcel to the northwest and another private parcel to the north on the seaward side of East Cliff Drive). A portion of parcel number 028-231-01 is within the County’s coastal permit jurisdiction and a portion is within the Commission’s jurisdiction.¹² The beach parcel is owned by Applicant Hooper. See Exhibit E.

The LCP defines parcel number 028-231-01 as a “Coastal Priority Site” that is specifically reserved for “acquisition and improvement of beach parcels for coastal access, recreation and protection of coastal biotic habitat” (LUP Policy 2.23.2 and LUP Figure 2-5). This site is designated “Existing Parks and Recreation” in the LUP and zoned “Parks, Recreation and Open Space” (PR). Pursuant to LUP Policy 2.23.3, a master plan (providing for full utilization of the site) is required for all priority sites. There is no master plan for this site, and the County did not process one as part of the project currently on appeal to the Commission. The County did not analyze any ‘coastal priority site’ issues.

Moreover, the coastal priority site may have other property ownership issues within the Commission’s CDP jurisdiction. First, it is clear that there has been longstanding public use of this beach parcel. The Commission is unaware of any restrictions that have been placed over the years on this long public use. Although only a court of law can establish or extinguish prescriptive rights of access for this property, it would appear that the public may have established a prescriptive right of access at this location. Second,

¹² Again, the toe of the bluff at this location defines the CDP jurisdictional boundary. The parcel boundary, however, is not coterminous with the toe of the bluff. Parcel number 028-231-01 extends up the bluff to a point approximately 10 to 20 horizontal feet from the toe of the bluff.



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 35

the entire coastal priority site parcel is at times covered by Corcoran Lagoon and/or high tides and may be a public trust area. Parcel maps from the late 1800s show this area as the mouth of the Corcoran Lagoon estuarine system. This mouth of this system was later fragmented when East Cliff Drive was installed inland of the subject parcel. In any case, although these issues do not apply to the area within the County CDP jurisdiction that is the subject of this appeal, they help to frame the level of unresolved property ownership concern at this location.

A property issue with the coastal priority beach site that is applicable to the County jurisdictional area, is that assessor parcel maps indicate a “beach easement” covers the seaward half of the parcel. The County did not analyze, and there is no information that has been provided as of the date of this staff report which indicates to what degree this easement may affect development of the coastal priority site, if at all.

In any case, it is clear that the LCP has prioritized this site for coastal recreation uses and facilities. It is inconceivable that a revetment would be allowed on this site absent a preponderance of evidence supporting protection of an existing structure consistent with LCP policies. In this case, the evidence shows that such a revetment is not warranted (see previous geologic findings).

The development of the coastal priority site with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure significantly threatened (as discussed earlier), and that would displace other potential LCP-described priority uses of the site, is inconsistent with LCP Policies 2.22.1, 2.22.2, 2.23.3, and Coastal Act Policies 30210, 30211, 30213, 30221, 30223 protecting this coastal priority site for public recreational uses. In addition, such a revetment extension would unnecessarily degrade the adjacent beach recreational area through the presence of an unnatural pile of rocks displacing recreational beach use inconsistent with Coastal Act Section 30240(b) which protects the adjacent beach areas from significant degradation.

10.2.4 Blocked Public Access – Existing Trail

As identified in the County’s approval, the proposed revetment would block existing beach access historically available from East Cliff Drive through the 23rd Avenue right-of-way. This access crosses the paved portion of 23rd (extending four houses seaward of East Cliff Drive) and then becomes a meandering path that historically led down the bluff edge to the terminus of the existing permitted revetment. This pathway has been blocked by the unpermitted revetment at its beachmost terminus for almost 3 years (i.e., since the revetment was installed without benefit of a coastal permit in February 1997). See Exhibit F for an approximate location of this trail.

The LCP and Coastal Act policies cited above protect this existing accessway and do not allow for development which would interfere with continued public use thereof (policies including, but not limited to, LUP Policy 7.7.10 and Coastal Act Sections 30210 and 30211). Moreover, the LCP requires that any necessary shoreline protective structures “must not reduce or restrict public beach access” (LUP 6.2.16 and IP Section 16.10.070(g)(5)). In light of these public access policies, the County required the reestablishment of the trail over the proposed revetment to the fore beach area “by means of a stairway (or alternative access acceptable to Planning Staff)” (County Condition II.A, see Exhibit A). The County likewise required an offer to dedicate (OTD) covering the reconfigured trail segment, and further



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 36

requiring the Applicant to maintain the accessway (County Conditions II.E, IV.B, and V.F.1, see Exhibit A). It is these conditions that precipitated the Applicants appeal of the project to the Commission (see Exhibit C).

The OTD that was required by the County is ambiguous on at least two points. First, County Condition II.E requires the OTD for that portion of the site located “along the existing foot trail on the owner/applicant’s property.” The portion of the “existing” foot trail that is on the “owner/applicant’s” property is limited to that portion of the existing trail that has since been covered with unpermitted rock on the coastal priority site (parcel number 028-231-01). This is because neither of the Applicants own the 23rd Avenue road right-of-way. The County also required the Applicant to establish an ownership interest in the right-of-way as a condition of approval (County Condition II.C, see Exhibit A). However, it is not clear that the required ownership interest must pre-date the OTD. Second, County Condition V.F.1 describes an OTD with the same issues as County Condition II.E, but it includes recognition of a segment leading to the fore beach at the site. County Condition V.F.1 describes a different area than County Condition II.E. As such, the County-required OTD(s) is(are) unclear.

If, as Commission staff believe, the road right-of-way is owned by the County, these OTD flaws would not be fatal as the legal ability of the public to access the beach would be preserved (over a County roadway and then an access easement to the beach). If, however, the County were to quit-claim their ownership interest in the right-of-way, then a private parcel (i.e., the 23rd Avenue road right-of-way) would intervene between the first public road (East Cliff Drive) and the required OTD. In any case, existing public access is not preserved, as required by the Coastal Act and LCP, by such a legal instrument.

Notwithstanding the question of the effectiveness of the OTD as a legal instrument, were the revetment otherwise approvable (which it is not, as described in earlier geologic hazard findings), the reconfigured accessway shown on the Applicant’s plans would serve to recreate, and possibly improve, the existing pathway access from the 23rd Avenue blufftop to the beach at this location. This is because the accessway would have included path segments which extended to both the fore and back beach (see Exhibit F). Such fore and back beach access is important at this location because Corcoran Lagoon oftentimes migrates adjacent to the bluff at this location serving to cut-off fore beach access. Two path segments would allow beach users to circumvent this obstacle. However, this part of the project is also not without issues.

First, the Applicant’s plans indicate a rip-rap border along the proposed backbeach path segment extending inland another 80 feet or so from the proposed end of the proposed revetment (see Exhibit F). These rip-rap boulders would raise the same issues of consistency with LCP policies as would the proposed revetment. And second, the Applicant has indicated that a stepped stairway would be constructed within the proposed revetment extension to provide access to the forebeach. The County previously required the reestablishment of the trail to the fore beach area by stairway or equivalent (County Condition II.A, see Exhibit A).

Commission staff have not seen any engineering specifications of such a rip-rap stairway, but are concerned that such a stairway would be difficult, if not impossible, to adequately construct and maintain within a rip-rap revetment. In terms of construction, it would be difficult to position boulders in such a way to mimic a stairway. In terms of maintenance, revetments are constantly in a state of oftentimes



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 37

imperceptible movement (including subsidence, upsurge, and rock migration) and a stairway within such a structure is not likely to remain for any length of time (particularly during and after storm events) without constant maintenance. It is likely that such a stairway would require a concrete and steel foundation of some sort to be stable for any length of time. Such a stairway might need to be elevated above the revetment (e.g., on caissons or the like) to function at all. In fact, the Applicant has provided an exhibit showing what this accessway might eventually look like after construction were it to be constructed on piers (see Exhibit H, page 8).

In any case, any such pathway/stairway proposals would need better definition and more precise plans with which to analyze their consistency with the LCP. Lacking such information, as in this case, it is difficult to determine whether or not such a reconfigured accessory would be adequate to protect public access at this site consistent with applicable LCP and Coastal Act policies.

10.2.5 Public Access – Sand Supply Impacts

As detailed earlier, the Commission's experience statewide has been that shoreline protection structures have a significant and measurable effect on shoreline process and sand supply. Natural shoreline processes, such as the formation and retention of sandy beaches, can be significantly altered by construction of protective structures, since bluff retreat is one of several ways that beach quality sand is added to the shoreline. Bluff retreat and erosion is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse, saturation of the bluff soil from ground water causing the bluff to slough off and natural bluff deterioration. Shoreline armoring directly impedes these natural processes.

To the extent that such sand supply impacts would reduce the useable recreational beach at this location, there would be a significant public access impact with the proposed revetment. LUP Policy 6.2.16 requires that any otherwise approvable shoreline protection structure "must not reduce or restrict public beach access." In this case, the proposed revetment would extend primarily inland along the bluff headland fronting the 23rd Avenue. Recreational sandy beach area that would be covered by such a revetment is in the Commission's coastal permitting jurisdiction and is the subject of unfiled CDP application 3-97-027. As such, the loss of the *beach area* on which the structure would be located (which would be approximately 1,200 square feet of coverage), is the subject of this related application. Furthermore, although the proposed revetment would tie into an existing revetment fronting the subject residence on the ocean side of the property (originally installed pre-Coastal Act), it would not itself fix the back beach location at this site. The back beach was effectively "fixed" when the existing, permitted, pre-Coastal Act on-site revetment was installed years ago. Thus, the sand supply impact applicable to the County's CDP jurisdiction is limited the retention of sand generating bluff materials.

However, as detailed in the sand supply findings earlier, the Applicant's consulting engineer has indicated that there has been no measurable erosion at the location of the proposed revetment in over 70 years (Rogers Johnson, 11/22/99 letter report). If this is true and the bluff is not retreating at this location, a revetment is not necessary. Any future proof of erosion that is threatening an existing structure would have to be evaluated, and if a shoreline structure was to be approved, then mitigation would be required for any loss of materials from the Santa Cruz Littoral Cell sand supply system.



California Coastal Commission

10.2.6 Public Access and Recreation Conclusion

The proposed revetment extension would be constructed partially on the 23rd Avenue road right-of-way and partially on the “coastal priority site” beach parcel at this location. The LCP designates each of these areas (in different ways) for coastal recreational uses, facilities, and amenities. The development of the coastal priority site and the right-of-way with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure significantly threatened (as discussed earlier), that would unnecessarily degrade the adjacent beach recreational area, and that would displace other potential LCP-described priority uses, is inconsistent with the LCP and Coastal Act policies cited in this finding.

Moreover, the proposed revetment would block an existing publicly used meandering trail from 23rd Avenue to the beach. Were the revetment to be otherwise approvable, the reconfigured trail alignment previously required by the County would need to be better defined (both the legal instrument and the proposed physical trail improvements) in order to be found consistent with the Coastal Act and LCP access policies cited in this finding.

Because of these access inconsistencies, and because the revetment is not otherwise approvable (as detailed in the previous geologic findings), the Commission denies the proposed revetment extension.

Finally, in the time since the County took action on the application, the Applicant has proposed an alternative accessway to mitigate for the loss of the pathway segment on 23rd Avenue (see Exhibit H). Under this alternative, the Applicant would reconstruct a boardwalk accessway within an existing County easement located to the north of the existing pathway at 23rd Avenue. This existing boardwalk was destroyed in the 1982-83 storms and never reconstructed by the County. This accessway is currently overgrown and only marginally useful at present because of variations in grade, holes in the path, Corcoran Lagoon overlap, et cetera. Also, the pathway generally ends before reaching the forebeach due to the typical water levels of Corcoran Lagoon in this area. See Exhibit H for photos of this accessway.

Such boardwalk accessway improvements as proposed by the Applicant would be welcome at this site, and could be used to mitigate some of the access impacts of the proposed revetment were it otherwise have been shown to be necessary and approvable (which it has not; see earlier geologic findings). However, if such off-site improvements were to be provided in-lieu of preserving existing access at 23rd, it would be difficult to find these trade-off consistent with LCP and Coastal Act policies protecting the existing accessway at 23rd. The County already has a public access easement in the existing boardwalk area. As described above, the property ownership situation at 23rd Avenue is ambiguous and would need to be clearly established before any such trade-offs could be evaluated against LCP and Coastal Act access policies. In general, if it is not possible to avoid impacts and mitigation is necessary, mitigation at the site of the impacts is the preferable method.

In any case, as described above, the Commission is denying the proposed revetment extension. As a result, the existing pathway from 23rd Avenue will not be blocked by the revetment in the future. Accordingly,



there is no need for access mitigation for the proposed project.¹³

10.3 Visual Resources

10.3.1 Applicable Policies

Visual access to and along the coast is a form of public access. As such, and as described in the above public access and recreation finding, the standard of review for visual access is not only the certified LCP but also the access policies of the Coastal Act. Applicable Coastal Act policies are:

***Section 30210.** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211.** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30251.** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The County's LCP is fiercely protective of coastal zone visual resources, particularly views from public roads, and especially along the shoreline. The LCP states:

***LUP Policy 5.10.2 Development Within Visual Resource Areas.** Recognize that visual resources of Santa Cruz County possess diverse characteristics.... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section....*

***LUP Policy 5.10.3 Protection of Public Vistas.** Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations,... inappropriate landscaping and structure design.*

¹³ While impacts from the proposed project will be avoided by denying the project, there remains an outstanding question of mitigating the access and recreational impacts associated with nearly 3 years of the revetment being in place without permits. See also Enforcement findings.



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 40

LUP Policy 5.10.6 Preserving Ocean Vistas. *Where public ocean vistas exist, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.*

LUP Policy 6.2.16 Structural Shoreline Protection Measures. *... The protection structure must ...be designed to minimize...visual intrusion. ...*

IP Section 16.10.070(g)(5)(vi). *Shoreline protection structures...shall not create a significant visual intrusion.*

IP Section 13.20.130(b)(1) Entire Coastal Zone, Visual Compatibility. *The following Design Criteria shall apply to projects site anywhere in the coastal zone: All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.*

IP Section 13.20.130(d)(2) Beach Viewsheds, Beaches. *The scenic integrity of open beaches shall be maintained....*

10.3.2 Visual Access Issues

The LCP requires the protection of the public vista from the beach and East Cliff Drive at this location through “minimizing disruption of landform and aesthetic character” (LUP Policy 5.10.3). The Coastal Act recognizes the public view at the site as a “resource of public importance” that must be protected from interference (Sections 30211 and 30251). The LCP likewise requires that the ocean vista at this site “be retained to the maximum extent possible” (LUP Policy 5.10.6) and that “the scenic integrity of open beaches shall be maintained” (IP Section 13.20.130(d)(2)). LCP and Coastal Act visual access policies as a whole speak to the need to minimize development in sight of the public viewshed.

The existing rip-rap revetment (i.e., that rip-rap in place prior to the unauthorized placement of rock in February 1997), did not wrap fully around the bluff and was only minimally visible from the public vista along the East Cliff Drive. The proposed revetment extension, however, would extend around the bluff and further inland towards East Cliff Drive creating a substantial visual impact. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large, unnatural pile of rock in front of the previously unadorned bluff which would essentially redefine the scenic corridor, reframe the ocean vista at this location, and upset the general viewshed of the open beach at this location. These negative viewshed impacts are inconsistent with the LCP and Coastal Act policies cited above.

These public viewshed impacts would be significant, and unavoidable, with the proposed revetment extension. Although the County condition to vegetate the upper portion of the revetment (County Condition V.B, see Exhibit A) attempts to soften this negative impact on the viewshed (as required by IP Section 13.20.130(b)(1)), there is little additional camouflaging that could be done for the proposed revetment at this site. The proposed revetment would constitute a “significant visual intrusion contrary to LUP Policy 6.2.16 and IP Section IP 16.10.070(g)(5)(vi). Programs like that in Carmel where revetments are covered



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 41

with beach sand at the base and vegetated ‘caps’ at the top would not likely be successful by a single property owner. Such programs generally require a greater scope, and a public commitment, to be successful. Corcoran Lagoon at the base of the revetment would also be a concern.



In any case, there are complementary LCP policies at play with this project: both geologic hazards policies and visual resource policies seek to minimize the amount of structural development and landform alteration along coastal bluffs and beaches. In this case, as described earlier, it has not been demonstrated that the proposed revetment extension is necessary to protect an existing structure that is significantly threatened. In fact, as described above, it appears that a lesser project (or no project) is a feasible alternative. Such a reduced project would better “minimize disruption of landform and aesthetic character” as required by the LCP. The less rip-rap boulders in the viewshed the better from a visual access perspective.

In sum, the proposed project is inconsistent with the visual policies cited in this finding and is therefore denied. Denial of the project retains the existing scenic viewshed at this location “to the maximum extent possible” consistent with LCP and Coastal Act policies which protect this resource.



California Coastal Commission

10.4 Wetland and Other Environmentally Sensitive Habitats

10.4.1 LCP Policies

The LCP is very protective of riparian corridors, wetlands and other ESHAs. LCP wetland and wildlife protection policies include Policies 5.1 et seq (Biological Diversity) and 5.2 et seq (Riparian Corridors and Wetlands), and Chapters 16.30 (Riparian Corridor and Wetlands Protection) and 16.32 (Sensitive Habitat Protection). These LCP Sections are shown in Exhibit I. In general, these LCP policies define and protect ESHAs, allowing only a very limited amount of development at or near these areas.

10.4.2 Consistency Analysis

Since only the portion of the site above the toe of the bluff is within the County's coastal permitting jurisdiction (and thus the subject of this appeal), the wetland and other ESHA issues are primarily applicable to the Commission's original jurisdiction area.¹⁴ In any case, however, the County's portion of the project likewise involves development which affects ESHA.

The LCP requires an area to be defined as ESHA if it includes a wetland or stream, or if listed species are present (LUP Policy 5.1.2, IP Section 16.32.040). In this case, the proposed project would place rock within the boundaries of an area seasonally occupied by Corcoran Lagoon and/or Rodeo Creek. The project purports, in part, to protect against stream scour from these waterbodies. This system may provide habitat for listed species.¹⁵ Per the LCP, this area is considered ESHA.

The LCP requires a biotic assessment of ESHAs "as part of normal project review to determine whether a full biotic report should be prepared" (LUP Policy 5.1.9, IP Section 16.32.070). This project did not include a biotic assessment nor a biotic report. As a result, it is difficult to determine: (1) the extent of the ESHA, and to what degree portions may be in the County's coastal permit jurisdiction; (2) whether the subject proposed revetment would be allowed at this location in light of ESHA protective policies; and (3) potential impacts and/or appropriate mitigations.

In any case, the LCP only allows uses that are dependent on ESHA resources within ESHAs with minor exceptions. LUP Policy 5.1.3 states:

LUP Policy 5.1.3 Environmentally Sensitive Habitats. *Designate the areas described in 5.1.2 (d) through (j) as Environmentally Sensitive Habitats per the California Coastal Act and allow only uses dependent on such resources in these habitats within the Coastal Zone unless other uses are: (a) consistent with sensitive habitat protection policies and serve a specific purpose beneficial to the public; (b) it is determined through environmental review that any adverse impacts on the resource will be completely mitigated and that there is no feasible less-damaging alternative; and (c) legally necessary to allow a reasonable economic use of the land, and there is no feasible less-damaging alternative.*

¹⁴ The subject of unfiled application number 3-97-027.

¹⁵ Tidewater goby (*Eucyclogobius newberryi*, Federal Endangered Species), steelhead (*Oncorhynchus mykiss*, Federally Threatened Species), and coho salmon (*Oncorhynchus kisutch*, Federal Threatened Species, State Endangered Species) are all thought to be present in Corcoran Lagoon/Rodeo Creek system.



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 43

In this case, the proposed revetment does not meet LUP Policy 5.1.3 tests: (1) lacking the LCP-required biotic assessment/report, it is difficult to determine if it would be “consistent with sensitive habitat protection policies;” (2) the revetment would not serve a “specific purpose beneficial to the public;” (3) it is not clear that “any adverse impacts on the resource will be completely mitigated” since the LCP-required reports were not prepared in this case; (4) the revetment is not “legally necessary to allow a reasonable economic use of the land; and (5) as previously detailed in the findings above, there is a feasible less-damaging alternative (i.e., no project or maintenance of the existing revetment end). The proposed revetment is not dependent on any ESHA resources and does not otherwise meet any of these LCP tests for uses in such sensitive areas.

10.4.3 ESHA Conclusion

It is unclear to what extent the proposed revetment project would involve ESHA resources within the County’s coastal permitting jurisdiction because LCP-required reports were not completed. Such a report was also requested, but not submitted as part of the pending unfiled CDP application to the Commission (see Exhibit M). The letter provided by the Applicant on this topic is insufficient for this purpose (see Exhibit J). In any case, it is clear that the proposed revetment would not qualify as an allowable use within an ESHA. The proposed project is inconsistent with LCP ESHA policies, is not necessary to protect an existing threatened structure consistent with the LCP, and is therefore denied. As a result, ESHA concerns with the proposed project no longer apply.¹⁶

10.5 California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

Santa Cruz County issued a draft Initial Study for the proposed revetment extension on January 28, 1998. Commission staff commented on the draft Initial Study on February 6, 1999 raising several issues with regards to establishing property ownership (of the beach parcel and the 23rd Avenue right-of-way), encroachment on recreational beach area, encroachment on Corcoran Lagoon wetland resources, visual issues, potential alternatives that appeared feasible (including the suggestion that the no project alternative appeared feasible in this case), and potential mitigations were the project to be otherwise shown necessary to protect an existing structure in danger from erosion (see Exhibit L).

Subsequently, Santa Cruz County issued a Negative Declaration for the proposed revetment extension project on March 12, 1998. Commission staff commented on the revised CEQA document and again raised many of the same issues with regards to: the ambiguity of the property ownership where the development

¹⁶ Except inasmuch as this denial ultimately requires removal of the revetment (since this is an after-the-fact application). This issue is discussed in more detail in the Enforcement finding.



Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 44

was proposed; the lack of quantification of the area of beach recreational space lost to the footprint of the proposed structure; the lack of a demonstration that an existing structure was at risk and that shoreline armoring was even warranted in this case; the lack of any quantification of the sand supply impact; a discussion of potential mitigations should the project be proven warranted to protect an existing structure at risk; and information on the coastal permit jurisdiction for the site (see Exhibit L).

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. All of the issues previously forwarded to the County in early 1998 during the CEQA review period are the same issues that have been discussed in this appeal. Commission staff has been consistent from the beginning, and at each stage in the long process since the unpermitted structure was installed in February 1997, in asserting that approval of this project is not well supported by the facts of the case. There are crucial information gaps, a lack of critical analyses, and major LCP and Coastal Act policy inconsistencies. Most importantly, the geotechnical information available shows that there is not a LCP-recognized existing structure that is significantly threatened at this location that would warrant the proposed shoreline protection and the range of negative coastal resource impacts associated with it.

As illustrated by the findings in this staff report, the Commission finds that the proposed revetment extension would result in significant adverse effects on the environment within the meaning of CEQA and that the "no project" alternative is the least environmentally damaging feasible alternative to the proposed project. Accordingly, the proposed project is not approvable under CEQA and is denied.

11. Enforcement

As described in this staff report, the revetment extension that is the subject of this appeal has been in place since February of 1997. The proposal evaluated herein has been for CDP recognition of that portion of the proposed revetment extension inland of the toe of the bluff (i.e., that portion located within the County's CDP jurisdiction). Although this application has been considered based upon the policies contained in the County's LCP and the Coastal Act's public access and recreation policies as applicable, consideration of this application does not constitute an admission as to the legality of any development undertaken on the subject site without benefit of a coastal development permit and shall be without prejudice to the California Coastal Commission's ability to pursue any legal remedy available under Chapter 9 of the Coastal Act.

In any case, the Applicant has entered into an enforcement agreement with Santa Cruz County arising out of the unpermitted rock installation in the County's jurisdiction (see Exhibit N). This enforcement agreement specifies that, in the event of ultimate denial of the proposed revetment extension, the Applicant "agrees to remove unauthorized construction and restore project area to original condition within 30 days of appeal denial date." Based upon the Commission's denial of this project on appeal, the site must be restored to pre-revetment condition by February 11, 2000 in order for the Applicants to be in compliance with the County enforcement agreement.

There are three concerns with this restoration:



California Coastal Commission

Appeal A-3-SCO-99-056 Staff Report

Hooper/Filizetti Revetment

Page 45

First, since removal and restoration constitute "development" as defined by Coastal Act Section 30106 and LCP IP Section 13.10.700-D, the Applicants will have to file a CDP application to effect removal and restoration. More than likely, there would need to be two CDPs: one for work on the beach (in the Commission's CDP permitting jurisdiction) and an appealable CDP for that portion in the County's CDP jurisdiction above the toe of the bluff.

Second, the area where the revetment was installed is oftentimes occupied by Corcoran Lagoon/Rodeo Creek. As described in this staff report, this system is an ESHA within which listed species may be present at times. Accordingly, the greatest of care and timing is necessary on the part of the Applicant to ensure that this habitat is not unnecessarily threatened by revetment removal operations. CDFG will need to be consulted and CDFG authorizations may be required. In any event, because the Commission has yet to act upon the portion of the unpermitted extension project located within its retained permit jurisdiction, these removal and restoration operations will need to be closely coordinated with Commission staff in the Central Coast District Office.

And third, completion of the unfiled application for that portion of the project located in the Commission's jurisdiction remains outstanding. The latest status letter for this application was sent to the Applicant by Commission staff on August 13, 1999 (see Exhibit M). This August 13, 1999 letter requested additional substantive materials necessary to file the subject application. As of the date of this staff report, these materials have not been received. In any case, the subject application shares the same issues with the appeal currently before the Commission. The major substantive difference is that the standard of review for the unfiled application is the Coastal Act, with site specific (but non-binding) policy guidance provided by the LCP. As such, and barring *substantially* different geotechnical information than has been detailed to date for the project, the Commission's decision on this appeal must be seen as indicative of any future action on this unfiled application.

In any case, the subject revetment extension has been in place for nearly three years. The subject revetment extension's negative coastal resource impacts (i.e., on public access, on visual resources, on ESHA) have been felt by the public for those 3 years. As discussed in this staff report, these impacts are, and have been, substantial. Although, the Commission sees no need to prolong this issue any longer than absolutely necessary, it is questionable whether or not all the necessary regulatory reviews can occur in the 30 day time frame specified by the County enforcement agreement. Notwithstanding this issue, the Commission encourages restoration to commence at the site as soon as possible.



California Coastal Commission